



# Maryland Department of Agriculture

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## MARYLAND DEPARTMENT OF AGRICULTURE

### LEGISLATIVE COMMENT

**DATE: March 13, 2019**

**BILL NUMBER:** SENATE BILL 978

**SHORT TITLE:** REAL PROPERTY - AGRICULTURAL LAND PRESERVATION EASEMENTS - SEPARATE PARCELS

**MDA POSITION:** INFORMATION

#### **EXPLANATION:**

This bill will extend the sunset date of Senate Bill 975 that passed into law in the 2017 legislative session. The 2017 law--expiring on June 30, 2019--provided a two-year window exception for original easement grantors to submit requests to subdivide a Maryland Agricultural Land Preservation Foundation (MALPF) easement property at an acreage that is less than the current minimum size requirement. The bill will extend this exception for an additional two years, through June 30, 2021.

#### **BACKGROUND INFORMATION:**

The MALPF program acquires agricultural easements on properties to preserve productive farmland and woodland for the continued production of food and fiber for all of Maryland's citizens. To accomplish this and other statutory and ancillary goals, MALPF easements restrict agricultural land from non-agricultural commercial, industrial and residential development. The Program has easements on more than 2,300 properties, covering over 316,000 acres at a public investment of more than \$740 million.

The ability to subdivide a MALPF easement property has never been a vested right by the terms of the easement. However, requests for subdivision have always been considered on a case-by-case basis. Early in the MALPF's history, if the Board approved a subdivision request, the minimum size requirement for the resulting parcels was at least 20 acres each. In the program's first two decades, it became evident that a smaller subdivided parcel's long-term agricultural viability was compromised, as a 20-acre farm has fewer options available to independently support a sustainable agricultural operation. Throughout the 1990s, the Board established

committees to review the adverse impact that subdivisions could have on the success of MALPF as a whole. The current deed of easement form still prohibits subdivisions. However, by statutory and regulatory authority, subdivision requests are considered by the Board if there is a “sufficiently extraordinary” justification to create an exception to the prohibition. By regulation, these requests must show that the proposed subdivision serves an agricultural purpose; will enhance or have no effect on the agricultural operation of the farm; and that the resulting parcels will be able to sustain long-term agricultural production independent of each other. With minor exceptions, a subdivided farm must also result in parcels of at least 50 acres each in order to maintain agricultural viability under the program.

Proposed MALPF easement properties have always been appraised and approved by Board of Public Works as a singular tract—even when comprised of multiple tax parcels. During the application process, when the counties rank applicants for purchase of easements, larger farms are given preference for entering the program. No distinction is made between large farms comprised of one tax parcel and large farms comprised of multiple tax parcels.

The 2017 law does two things: 1) permits subdivision of farms that came into the Program prior to 1999 to subdivide off and sell parcels as small as 20 acres (rather than the current 50 acre minimum threshold); and 2) permits certain landowners to subdivide along tax parcel boundaries, no matter how small the parcel, in order to convey to a child.

Extending the sunset on the 2017 law may result in small parcels that no longer meet minimum soils and size criteria, or agricultural viability, resulting in loss of farming on prime agricultural land paid for with public funds. Extending the 2017 law also allows for more easement properties to be divided into parcels of less than 50 acres (with some in the single digits). Smaller parcels can threaten the viability of the agricultural operation, and may lead to scenarios where some easements essentially become large residential lots and not small working farms. Such properties could present a strong argument for easement termination under the statutory burden of proof that the land can no longer be profitably farmed. This result is antithetical to MALPF’s Statutory Mandate to preserve large contiguous farm parcels.

If you have additional questions, please contact Cassie Shirk, Director of Legislation and Governmental Affairs, at [cassie.shirk@maryland.gov](mailto:cassie.shirk@maryland.gov) or 410-841-5886.