

CODE OF MARYLAND REGULATIONS (COMAR)

34.03.03.00

Title 34. DEPARTMENT OF PLANNING

Subtitle 03. LAND USE

Chapter 03. Certification of County Agricultural Land Preservation Programs

Authority: State Finance and Procurement Article, §§ 5-203(b)(2) and 5-408; Agriculture Article, §§ 2-103(b) and 2-518; Tax-Property Article, § 13-306; Annotated Code of Maryland

34.03.03.01

.01 Purpose.

This chapter describes the procedures and requirements of the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation for certifying county agricultural land preservation programs to use State and local funds.

34.03.03.02

.02 Definitions.

- A. In this chapter, the following words have the meanings indicated.
- B. Terms Defined.
 - (1) "Certification period" means the period of time during which a county is certified to retain and receive additional agricultural land transfer tax revenues as a result of certification of the county program.
 - (2) "County" means a county of the State or Baltimore City.
 - (3) "County agricultural preservation advisory board" means a board established by a county under Agriculture Article, §2-504.1, Annotated Code of Maryland.
 - (4) "County funds" means local funds derived from a source other than the additional agricultural land transfer tax revenues a county is authorized to retain as a result of certification.
 - (5) "County program" means a county's planning, zoning, land use management, and agricultural land preservation programs.
 - (6) "Department" means the Maryland Department of Planning.
 - (7) "Development right" means the right to develop agricultural land for non-agricultural commercial, industrial, or residential use.
 - (8) "Foundation" means the Maryland Agricultural Land Preservation Foundation in the Maryland Department of Agriculture.
 - (9) Local Plan.
 - (a) "Local plan" means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the area's future development.
 - (b) "Local plan" includes a general plan, master plan, comprehensive plan, community plan, and the like as adopted in accordance with Article 66B, Titles 3 and 14, Annotated Code of Maryland.
 - (10) "Non-qualifying expenditures" means expenditures by a county, other than

qualifying expenditures, to support, administer, or operate the county's agricultural easement purchase program.

- (11) "Priority preservation area" means the area identified in a priority preservation area element of a county's local plan.
- (12) "Program development strategy" means a strategy designed to improve the effectiveness of a county agricultural land preservation program.
- (13) "Program evaluation" means an analysis of a county agricultural land preservation program that the county conducts to assess the ability of its program to achieve State and county program certification goals.
- (14) "Qualifying expenditures" means expenditures of county funds by a county to:
 - (a) Purchase development rights; or
 - (b) Provide additional financial incentives to agricultural land owners to sell their development rights.

34.03.03.03

.03 Goals.

The goals of certification of county programs are to:

- A. Maintain the positive economic contribution of agriculture and the important role of farming in creating a high quality environment in Maryland;
- B. Encourage the development of county agricultural land preservation programs which:
 - (1) Complement the ability of the Maryland Agricultural Land Preservation Foundation to preserve viable agricultural land; and
 - (2) Make agricultural land preservation part of an overall effort to manage growth and preserve environmental quality; and
- C. Ensure the cost effectiveness of increased expenditures by the counties, toward preservation of agricultural lands consistent with these goals, of the agricultural land transfer tax revenues the counties are authorized to retain as a result of certification of county programs.

34.03.03.04

.04 Eligible Applicants.

A county may apply to the Department and the Foundation for certification of a county program.

34.03.03.05

.05 Eligible Programs.

A county program is eligible for certification by the Department and the Foundation if:

- A. The county agricultural preservation advisory board, the county office of planning, or the county planning commission, as designated by the county, and the governing body of the county have approved:
 - (1) The county program as an effective approach to agricultural land preservation; and
 - (2) The application for certification of the county program;
- B. The county has established county programs to encourage participation of farmers in agricultural land preservation efforts, including purchase of development rights or financial enhancements related to the purchase of development rights, outside of the

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- Foundation;
- C. The county program is likely to be successful, as described in Regulation .06D of this chapter;
 - D. The county has committed to make qualifying expenditures in an amount at least equal to the additional funds that would be available to the county as a result of certification of the county program, and has established the means to do so;
 - E. The county submits an evaluation of the county's agricultural land preservation program, including the following:
 - (1) Strengths and shortcomings of the agricultural land preservation program in each of the following areas:
 - (a) The ability of the county's zoning and other land use management tools to do the following in the county's priority preservation area:
 - (i) Limit the amount and geographic distribution of subdivision and development in accordance with established agricultural land preservation goals;
 - (ii) Stabilize the land base; and
 - (iii) Provide time for agricultural land preservation easement acquisition to achieve State and local preservation goals before the agricultural land resource is excessively compromised by development;
 - (b) The ability of combined State, local, and other agricultural land preservation easement acquisition programs to permanently preserve lands in the county's priority preservation area at a rate sufficient to achieve State and local preservation goals;
 - (c) The degree to which county land use and other ordinances and regulations restrict or otherwise interfere with the conduct of normal agricultural activities in the priority preservation area;
 - (d) The ability of county zoning, subdivision, and development regulations and policies to minimize the degree to which development in the priority preservation area interferes with normal agricultural activities; and
 - (e) The ability of county and other farming assistance programs to support profitable agriculture and forestry activities in the priority preservation area;
 - (2) Statistics and other factual information necessary to evaluate the county's agricultural land preservation program, such as:
 - (a) A description of the amount of subdivision and development allowed on land within zoning districts comprising the priority preservation area, including base density and additional lots allowed for clustering, density transfers between parcels, and any other provisions affecting lot yields;
 - (b) The numbers and locations of residential parcels and acres subdivided and developed within the priority preservation area during the most recent 5-year period;
 - (c) The total acreage and locations of farms and parcels permanently preserved through agricultural land preservation easements recorded in the land records of the county during the most recent 5-year period;
 - (d) The constraints and restrictions placed by county ordinances and regulations on normal agricultural activities, such as minimum setbacks from property boundaries; and
 - (e) The constraints and restrictions placed by county ordinances and regulations on non-agricultural development activities, in order to

- minimize conflicts with normal agricultural activities within the priority preservation area;
- F. The county submits a program development strategy which:
- (1) Describes the way in which the goals of the program described in Regulation .03 of this chapter will be accomplished in the county's priority preservation area, including the county's strategy to protect land from development through zoning, preserve the desired amount of land with permanent easements, and maintain a rural environment capable of supporting normal agricultural and forestry activities;
 - (2) Is based on the evaluation required in §E of this regulation;
 - (3) Includes a schedule of activities the county will undertake to overcome shortcomings in the ability of county tools identified in the evaluation; and
 - (4) Includes a schedule of milestones according to which the county hopes to overcome the identified shortcomings, including but not limited to changes the county intends to make or pursue in:
 - (a) The county comprehensive plan, zoning, land use management tools, and related regulations and procedures;
 - (b) County easement acquisition programs;
 - (c) County ordinances, regulations, or procedures supporting or restricting normal agricultural activities;
 - (d) County ordinances, regulations, or procedures limiting non-agricultural development activities that might interfere with the conduct of normal agricultural activities;
 - (e) County strategies or mechanisms to fund easement acquisition; and
 - (f) Farming assistance programs and activities;
- G. The county submits an inventory, in digital or tabular form, of the properties which have been permanently preserved by a recorded conservation easement, which:
- (1) If in digital form, is approved by the Department for content and format;
 - (2) If in tabular form, includes, for each property:
 - (a) The number of each tax map on which each parcel comprising the easement occurs;
 - (b) Each grid cell number of each tax map for each parcel comprising the easement;
 - (c) Each parcel number through which the property can be identified on each tax map;
 - (d) The total number of acres of each easement property;
 - (e) The date on which the easement became effective;
 - (f) The preservation program which holds the easement;
 - (g) The means through which the easement was acquired, such as purchase, transfer of development rights between private parties, or another means specified by the county; and
 - (h) The easement purchase price, if the easement was purchased through or with financial assistance from a government program;
- H. Beginning July 1, 2008, the county's local plan includes a priority preservation area element that:
- (1) Identifies and delineates a priority preservation area that:
 - (a) Is large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the priority preservation area under its local plan;
 - (b) Contains productive agricultural or forest soils or, where productive soils

- are lacking, is capable of supporting profitable agricultural and forestry enterprises; and
- (c) Is governed by local policies, ordinances, regulations, and procedures that:
 - (i) Stabilize the agricultural and forest land base so that development does not convert or compromise agricultural or forest resources; and
 - (ii) Support the ability of working farms in the priority preservation area to engage in normal agricultural activities; and
- (d) Has been submitted to and certified by the Department and the Foundation under Regulation .06 of this chapter;
- (2) Establishes appropriate goals for the amount and types of agricultural resource land to be preserved in the priority preservation area and the rationale used to establish the goals, including a county acreage goal to protect at least 80 percent of the remaining undeveloped land in the priority preservation area, as calculated at the time the application is submitted;
- (3) Describes the county's strategy to support normal agricultural and forestry activities in conjunction with the amount of development permitted in the priority preservation area;
- (4) Includes maps showing the county's priority preservation area;
- (5) Describes the priority preservation area in the context of the county's growth management plans;
- (6) Describes the way in which preservation goals will be accomplished in the priority preservation area, including the county's strategy to protect land from development through zoning, preserve the desired amount of land with permanent easement, and maintain a rural environment capable of supporting normal agricultural and forestry activities;
- (7) Includes an evaluation of the ability of the county's zoning and other land use management practices to limit the impact of subdivision and development, allow time for easement purchase, and achieve the Foundation's goals before development excessively compromises the agricultural and forest resource land;
- (8) Identifies shortcomings in the abilities of the county's zoning and land management practices and identifies current or future actions to correct the shortcomings;
- (9) Describes the methods the county will use to concentrate preservation funds and other supporting efforts in the priority preservation area to achieve the goals of the Foundation and the county's acreage preservation goal; and
- (10) Incorporates by reference or inclusion the county's agricultural land preservation program evaluation and program development strategy required under §§E and F of this regulation.

34.03.03.06

.06 Priority Preservation Area Certification.

To certify a priority preservation area under Regulation .05 of this chapter, the Department and the Foundation shall determine that:

- A. The priority preservation area element of the county's local plan includes a priority preservation area element as prescribed under Regulation .05H of this chapter;
- B. The area meets the requirements of Regulation .05H(1)(a)—(c) of this chapter;

- C. The size of the area is appropriate in relation to the county's agricultural land acreage preservation goal; and
- D. The local plan, plan implementation tools, and program development strategy are likely to be successful in controlling development and providing time to achieve State and county goals through easement acquisition in the priority preservation area before the area is excessively compromised by development.

34.03.03.07

.07 Application Process.

- A. An application shall be submitted to both the Department and the Foundation on a form prescribed by the Department and the Foundation.
- B. The Department and the Foundation shall review a complete application, and each determine whether the application should be approved, approved with conditions, or disapproved.
- C. Within 45 days after receipt of an application, the Foundation shall notify the Department whether the Foundation has approved, approved with conditions, or disapproved the application, together with any changes that must be made to meet certification requirements.
- D. Within 60 days after receipt of an application by the Department and the Foundation, the Department shall notify the applicant in writing whether the application has been approved, approved with conditions, or disapproved, and the reasons for approval with conditions or disapproval. Any conditions shall require the county to submit, within 120 days, a schedule according to which the county will satisfy the conditions.
- E. The decision of the Department and the Foundation is final with no right of appeal.
- F. If a county program is denied approval, the county at any time may submit a revised application, which shall be processed as provided in §§A—E of this regulation.

34.03.03.08

.08 Certification Period.

Certification of a county program is effective for 3 years from the date the Department notifies the county that the county application has been approved, or from the date the county notifies the Department, and the Department confirms to the county in writing, that all conditions for approval have been met. If a county has submitted the second annual report which serves as the county's application for recertification of the county program required under Regulation .11 of this chapter, certification of the county program shall remain in effect until the Department notifies the county that the application for recertification has been approved, approved with conditions, or denied.

34.03.03.09

.09 Effect of Certification.

- A. If a county program is certified, the county is eligible for:
 - (1) Funds that are available to counties as additional funds under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §13-306, Annotated Code of Maryland, solely because the county program is certified under Regulation .07, or recertified under Regulation .11 of this chapter; and

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- (2) As of July 1, 2008, funds provided for the Foundation over and above the funding the Foundation received under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §§13-209 and 13-306, Annotated Code of Maryland, as of July 1, 2007.
- B. The funds available under §A of this regulation to a county with a certified county program may be used only for:
- (1) The purposes stated in or permitted under Agriculture Article, §2-508.1, Annotated Code of Maryland, or Tax-Property Article, §13-209 or 13-306, Annotated Code of Maryland, as the case may be;
 - (2) Purchase of development rights in the county's certified priority preservation area;
 - (3) Direct payments to landowners supplementing payments made by the Foundation for the purchase of development rights;
 - (4) Direct payments to landowners in conjunction with the transfer of development rights from their land to areas where residential development is planned;
 - (5) Any other direct use of funds or financial expenditures to expedite or promote the sale or purchase of development rights for the permanent preservation of agricultural land as approved by the Foundation and the Department, including payments for:
 - (a) Installment purchase agreements with landowners under an installment purchase agreement program approved by the Foundation;
 - (b) Preservation of critical farms under the Critical Farms Program established under Agriculture Article, §2-517, Annotated Code of Maryland; and
 - (c) The Next Generation Farmland Acquisition Program developed by the Maryland Agricultural and Resource-Based Industry Development Corporation under Article 41, Title 13, Subtitle 5, Annotated Code of Maryland, and approved by the Foundation;
 - (6) Administrative costs associated with a certified county program that do not exceed 10 percent of the county share of the agriculture land transfer tax or \$30,000, whichever is greater;
 - (7) Bond annuity funds for bonds issued by the county for the sole purpose of purchasing agricultural land preservation easements; and
 - (8) County guarantees of loans collateralized by development rights on agricultural land that meets the standards established under Agriculture Article, §2-512(e), Annotated Code of Maryland.

34.03.03.10

.10 Reporting Requirements.

- A. Annual Reports.
- (1) During the certification period, the county shall submit two written annual reports to the Department and the Foundation.
 - (2) The first report is due on October 1 following completion of the first full fiscal year of the certification period, except as extended by the Department for reasonable cause.
 - (3) The second report is due on October 1 following completion of the second full fiscal year of the certification period, except as extended by the Department for reasonable cause.

- B. Financial Reporting.
- (1) Both annual reports shall provide a financial report that includes:
 - (a) Estimated revenues and expenditures for the county's agricultural land transfer tax account, established under Tax-Property Article, §13-306, Annotated Code of Maryland, for fiscal years that have transpired in their entirety during the certification period; and
 - (b) Revenue sources for, and estimated expenditures of, any other fund used to purchase development rights, provide financial enhancements to purchases of development rights, or administer the county's agricultural preservation program.
 - (2) The financial report shall provide the information necessary for the Department and the Foundation to determine if the county is meeting its commitment of qualifying expenditures, and using for permitted uses the funds made available under Regulation .09B of this chapter. A financial reporting form for this purpose is available from the Department.
 - (3) All expenditures reported shall be identified as qualifying or nonqualifying expenditures.
 - (4) Financial reports shall be verified and signed by the county's chief financial officer or by an independent auditor.
- C. The first annual report of each certification period shall include:
- (1) The financial report described in §B of this regulation;
 - (2) An inventory of properties which have been permanently preserved by an agricultural land preservation easement during the reporting period, submitted in accordance with the requirements in Regulation .05G of this chapter;
 - (3) The total number of easements purchased and acreage preserved through the county and State agricultural land preservation easement purchase programs during the reporting period; and
 - (4) An update on progress made to reach the milestones established in the county's most recent program development strategy in accordance with the requirements in Regulation .05F of this chapter and approved by the Department and the Foundation.
- D. The second annual report of each certification period shall:
- (1) Meet the reporting requirements of §C of this regulation;
 - (2) Include a map of all agricultural lands preserved in the county, including those preserved both during and before the certification period, showing those properties in relation to priority preservation areas;
 - (3) Demonstrate that the county program continues to meet the certification requirements of Regulations .05 and .06 of this chapter;
 - (4) Include a description of any changes in the county priority preservation area and the priority preservation area element of the local plan;
 - (5) Include an updated program evaluation, as prescribed in Regulation .05E of this chapter; and
 - (6) Include an updated program development strategy, as prescribed in Regulation .05F of this chapter.

34.03.03.11

.11 Recertification.

- A. A county that has received certification of a county program may apply for recertification

- of the county program. The second annual report submitted in compliance with Regulation .10 of this chapter shall serve as the county's application for recertification.
- B. A county program may be recertified only if:
- (1) During the period of certification, the county:
 - (a) Has maintained a successful program of purchase of development rights or financial enhancements related to the purchase of development rights;
 - (b) Has continued to meet the requirements of Regulation .05D of this chapter;
 - (c) Has made reasonable progress on the recommendations and improvements scheduled in its most recent program development strategy, or can justify deviation from that strategy;
 - (d) Has been reasonably successful in preserving agricultural land and controlling subdivisions and conversion of agricultural land consistent with State and county goals and plans to preserve agricultural land and to protect environmental quality; and
 - (e) Has made significant attempts to coordinate agricultural preservation efforts with those of neighboring counties, when appropriate, and the Department and Foundation;
 - (2) The county provides an update on the method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals, as required under Regulation .05E and F of this chapter, that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area;
 - (3) The Department and Foundation:
 - (a) Have approved the county's update of its program development strategy, as required by Regulation .10D(6) of this chapter;
 - (b) Determine that the latest local plan update includes an evaluation of:
 - (i) The county's progress toward meeting the goals of the Foundation;
 - (ii) Any shortcomings in the county's ability to achieve the goals of the Foundation; and
 - (iii) Past, current, and planned actions by the county to correct any shortcomings identified as part of the evaluation; and
 - (c) Determine that the priority preservation area identified in the priority preservation area element of the county's local plan continues to meet the requirements of Regulation .06 of this chapter.

34.03.03.12

.12 Counties Certified Before July 1, 2008.

- A. A county certified or recertified before July 1, 2008, may apply for recertification under this chapter.
- B. The Department and the Foundation may conditionally recertify a county under this regulation if they do not meet the requirements of Regulations .05H and .06 of this chapter, if the Department and Foundation determine that the county's program development strategy is likely to result in a priority preservation area and a priority preservation area element that will meet those requirements by December 1, 2010.

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