

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

COMAR 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.

.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.

COMAR 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.

COMAR 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.

COMAR 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 local governing body and to the Foundation;  
and

(b) The agricultural preservation advisory board shall state in its recommendations, with the advice of the applicable soil conservation district, that an approved soil conservation plan is being implemented.

(5) For the purpose of this chapter, land has "extraordinary agricultural capability" if it:

(a) Has a soil conservation plan approved by a local soil conservation district, fully implemented according to a schedule in the plan;

(b) Is located in an area designated by a county for agricultural preservation;

(c) Is recommended by the majority of the Foundation's Board of Trustees after an on-site inspection is conducted by one or more members of the Foundation; and

(d) Meets either of the following:

(i) Has at least 60 percent of the land area consisting of U.S.D.A. Soil Capability Classes I, II, and III, or U.S.D.A. Woodland Groups 1 and 2 which are applied to wooded areas only; or

(ii) Has a minimum of 72 percent of the land area less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands consisting of a combination of U.S.D.A. Soils, Class I, II, and III on cropland and pasture and Woodland Groups 1 and 2 on wooded areas.

E. Additions to Existing Districts. The procedures for adding land to existing districts shall be the same as for the initial establishment of districts. There is no minimum size criteria for the addition of land parcels contiguous to an agricultural preservation district.

F. Exclusion of Lots in Districts.

(1) A landowner may request to have excluded from a district certain portions of the owner's property, constituting lots of either 1 acre or less, or, when permitted by Agriculture Article, §2-513, Annotated Code of Maryland, 2 acres or less, if the purpose for excluding the property is to construct a dwelling house for the owner or the owner's children.

(2) In making this request, the landowner shall follow the procedures described in Regulation .16 of this chapter.

(3) In reviewing the landowner's request, the Foundation shall examine the:

(a) Location of the lot to be excluded;

(b) Potential impact the lot's exclusion may have on the agricultural use of the remaining property; and



(c) Owner's future right, if not already forfeited under §F(4) of this regulation, to have lots released from the Foundation's easement, should an easement be subsequently acquired by the Foundation.

(4) Lots Released from Foundation's Easement.

(a) Lots excluded under this section from property an owner has placed in a district affects the owner's future right under Agriculture Article, §2-513(b), Annotated Code of Maryland, to have lots released from the Foundation's easement, should the Foundation subsequently acquire an easement in that property.

(b) For each lot excluded from a district under this section, the number of lots a landowner would otherwise be entitled to have released, should the Foundation acquire the easement, will be reduced by one.

(c) As a precondition to releasing a lot from a district under this section, the owner shall sign a statement agreeing to and acknowledging the 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.

COMAR 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.

C. 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.

#### COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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. 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.

COMAR 15.15.01.18

.18. Repealed.

Complete through Maryland Register Vol. 44, Issue 7, dated March 31, 2017.

COMAR 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.

#### COMAR 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.

COMAR 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 1/23 of 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 funds 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 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.

### COMAR 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.

COMAR 15.15.01.9999  
.9999. Administrative History

## Credits

### **Effective date: January 12, 1979 (6:1 Md. R. 19)**

Regulation .03 amended effective July 27, 1987 (14:15 Md. R. 1662)

Regulation .03C amended effective June 4, 1984 (11:11 Md. R. 963); August 27, 1984 (11:17 Md. R. 1493); March 25, 1985 (12:6 Md. R. 597)

Regulation .04 amended effective July 27, 1987 (14:15 Md. R. 1662)

Regulation .04B amended effective June 4, 1984 (11:11 Md. R. 963)

Regulation .04B amended as an emergency provision effective June 6, 1984 (11:13 Md. R. 1174); emergency status expired July 16, 1984

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Regulation .04-1 adopted effective March 25, 1985 (12:6 Md. R. 597)

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Regulation .05D amended effective July 27, 1987 (14:15 Md. R. 1662)

Regulation .06A amended effective July 27, 1987 (14:15 Md. R. 1662)

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Chapter revised effective July 11, 1988 (15:14 Md. R. 1656)

Existing Preface, Program Summary, and Regulation .01 amended and recodified to new Regulations .01, .01-1, and .01-2, respectively, effective April 15, 1991 (18:7 Md. R. 773)

Regulation .03 amended effective April 15, 1991 (18:7 Md. R. 773)

Regulation .03D amended as an emergency provision effective July 1, 1992 (19:15 Md. R. 1386); emergency status extended at 19:23 Md. R. 2038; amended permanently effective December 21, 1992 (19:25 Md. R. 2207)

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Regulation .04B amended effective April 15, 1991 (18:7 Md. R. 773)

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Regulation .05G amended effective April 15, 1991 (18:7 Md. R. 773); November 11, 1991 (18:22 Md. R. 2397)

Regulation .05N amended effective April 15, 1991 (18:7 Md. R. 773); November 11, 1991 (18:22 Md. R. 2397)

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Regulation .07A, D amended effective March 19, 1990 (17:5 Md. R. 638)

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Chapter revised effective November 4, 1996 (23:22 Md. R. 1498)

Regulation .01-2 amended effective August 6, 2001 (28:15 Md. R. 1399)

Regulation .01-2B amended effective September 19, 2011 (38:19 Md. R. 1148)

Regulation .03C amended effective January 19, 2004 (31:1 Md. R. 31)

Regulation .03D amended effective September 8, 1997 (24:18 Md. R. 1296)

Regulation .05B amended effective July 3, 2006 (33:13 Md. R. 1065)

Regulation .12 repealed and new Regulation .12 adopted effective May 17, 2010 (37:10 Md. R. 723)

Regulation .17D amended as an emergency provision effective October 11, 2002 (29:23 Md. R. 1808); amended permanently effective February 3, 2003 (30:2 Md. R. 76)

Regulation .17F repealed effective June 4, 2018 (45:11 Md. R. 579)

Regulation .17H—J adopted effective October 30, 2000 (27:21 Md. R. 1977)

Regulation .17H—J repealed and new H—K adopted effective August 6, 2001 (28:15 Md. R. 1399)

Regulation .17H—K repealed effective September 19, 2011 (38:19 Md. R. 1148)

Regulation .18 repealed effective April 10, 2006 (33:7 Md. R. 675)

## CHAPTER 02 FORMULA FOR DETERMINING THE AGRICULTURAL VALUE OF LAND

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

### COMAR 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.

### COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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 acres X 0.72 = 43.20; 40 acres X 0.50 = 20; 43.20 + 20 = 63.20; 63.20 divided by 100 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.  $(50 + 20) \text{ divided by } 2 = 35$ .) 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  $(\$51.97 \text{ divided by } 0.06)$ .) 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.

## .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
VI	.18

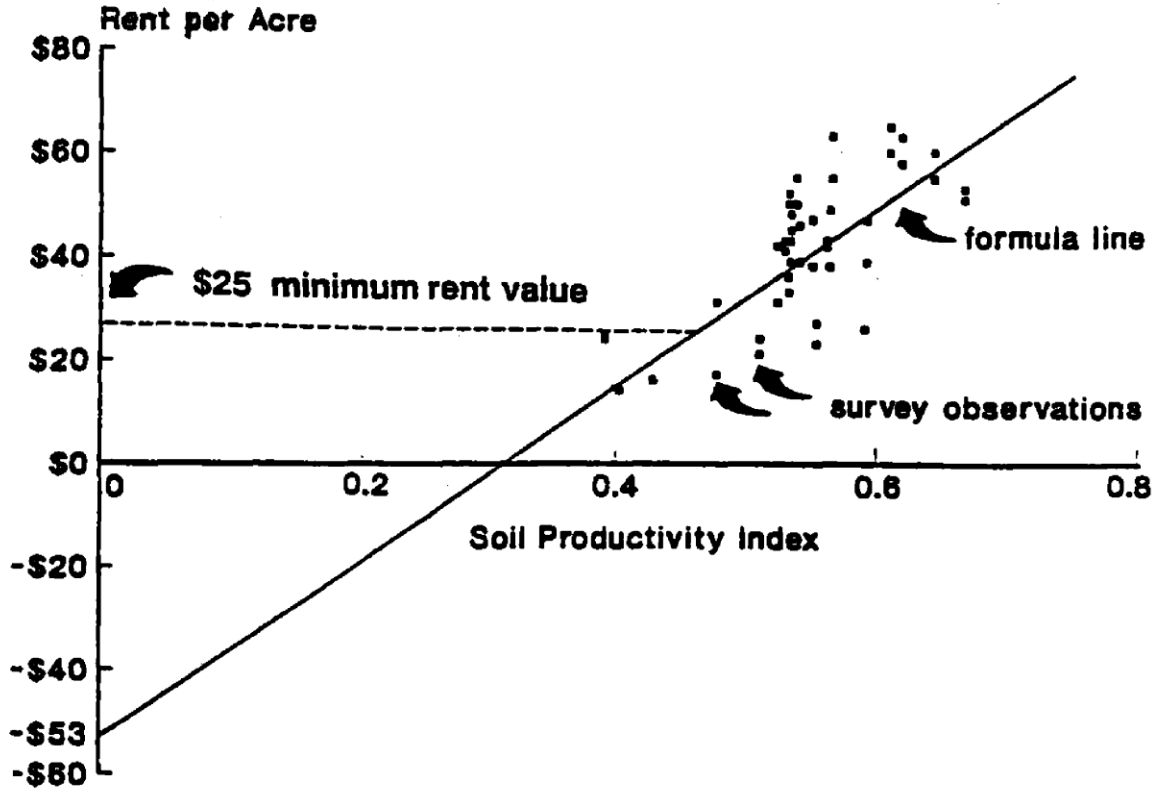
\*The figures in this table numerically express the soil productivity for each class of soil. Compiled by the Maryland Agricultural Statistics Services, USDA, and the Agricultural Resource Economics Department, University of Maryland, they are based on the capability each class has of producing crops 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.

.08. Relationship Between Rent and Soil Productivity Index.

15.15.02.08

DEPARTMENT OF AGRICULTURE

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



COMAR 15.15.02.9999  
.9999. Administrative History

## **Credits**

### **Effective date:**

Regulations .01—.08 adopted as an emergency provision effective March 4, 1991 (18:6 Md. R. 681); emergency status extended at 18:16 Md. R. 1810 (August 9, 1991)

Regulations .01—.08 adopted effective October 28, 1991 (18:21 Md. R. 2310)

Regulation .06C amended effective September 8, 1997 (24:18 Md. R. 1297)

## CHAPTER 03. TENANT HOUSE OR REPLACEMENT DWELLING HOUSE APPROVAL FOR A FARM SUBJECT TO AN AGRICULTURAL LAND PRESERVATION EASEMENT

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

COMAR 15.15.03.01

### .01. Scope.

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

COMAR 15.15.03.02

### .02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Existing dwelling" means a building, structure, or mobile home that was designated by the Foundation and a county as an existing dwelling at the time of the execution of an agricultural land preservation district agreement or agricultural land preservation easement.

(2) "Fully engaged in the operation of a farm" means the tenant is committed to an average of at least 30 hours per week over a continuous 12-month period.

(3) "Replacement dwelling house" means a residential structure that may be built in lieu of a new tenant house if the Foundation has approved the conversion of an existing dwelling house into a tenant house.

(4) 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.

(5) "Tenant house" means an accessory structure in service to a farm operation, approved or designated by the Foundation to be restricted to residential use by a tenant or tenants on the property.

.03. Tenant House Eligibility.

A. The approval for the construction of a tenant house by the 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. When applying for approval of a tenant house, a landowner shall demonstrate to the Foundation a current and compelling need. To do so, a landowner shall show:

- (1) The nature of the farm operation and the reasons why one or more tenant is necessary to carry out farm operations; and
- (2) That one or more tenants will be fully engaged in the operations 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, etc.

C. A tenant house may be approved for and occupied only by tenants of whom 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;
- (2) May not be located on a farm field;
- (3) May not be larger in size than at least one nontenant dwelling house on the property, if any exist; and
- (4) May not be more than 2,000 square feet in size, 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, and porches not used as living space, garages, or unenclosed decks.

E. A tenant house, including its size and location, may not be approved by the Foundation unless it conforms to 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.

COMAR 15.15.03.04

.04. Tenant House Application Procedure.

Before the Foundation may consider a request for a tenant house, a landowner shall submit the following:

A. An application, completed and signed by each titled landowner, which addresses the criteria in Regulation .03;

B. An unmarked copy of the tax map, or boundary survey, which outlines the entire Foundation district or easement property;

C. A second copy of the tax map, which shall include the following:

(1) Property boundaries of the Foundation district or 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:

(1) The tenant will be compensated for the tenant's work;

(2) The duties and responsibilities of the tenant relative to the farming operation; and

(3) The time commitment that the tenant will have to the farming operation stated as average hours per week and total hours over a continuous 12-month period.

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;

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; and

H. A written statement or plan from the landowner stating the size of the proposed tenant house as 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, and porches not used as living space, garages, or unenclosed decks.

COMAR 15.15.03.05

.05. Replacement Dwelling House Eligibility.

A. The approval for the construction of a replacement dwelling house by the Foundation is not an absolute right of a landowner. The Foundation shall only approve a request for a replacement dwelling house if the Foundation:

- (1) Has approved the application for a tenant house; and
- (2) Has approved an existing dwelling house as a tenant house.

B. A replacement dwelling house may be approved and used only for the current or future landowner's personal residential use.

C. The Foundation shall approve the location and size of a replacement dwelling house as a residential structure. Unless the Foundation approves otherwise, a replacement dwelling house:

- (1) Shall be located in the vicinity of other farm buildings;
- (2) May not be located on a farm field;
- (3) May not be smaller in size than the existing dwelling approved to be redesignated as a tenant house; and
- (4) May not be more than 3,500 square feet in size, 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, and porches not used as living space, garages, or unenclosed decks.

D. A replacement dwelling house, including its size and location, may not be approved by the Foundation unless it conforms to local planning and zoning regulations.

E. The property owner must execute an agreement with the Foundation to prohibit a replacement dwelling house and the land where it is constructed from being separately conveyed from the farm subject to the easement. The agreement will also specify that the replacement dwelling house will be for the personal residential use of the current or future landowners. The agreement shall be recorded among the county land records and shall bind future owners of the property.

F. In counties that require subdivision of nontenant dwelling houses, the subdivision plat will state that the parcel is not to be separately conveyed from the property.



G. If the Foundation approves a replacement dwelling house that is smaller than 3,500 square feet, any proposed additions are subject to the Foundation's prior review and approval.

H. This section does not apply to applications to replace an existing dwelling house damaged or destroyed by fire, water, or natural causes.

COMAR 15.15.03.06

.06. Replacement Dwelling House Application Procedure.

Before the Foundation may consider a request for the construction of a replacement dwelling house, a landowner must first obtain approval from the Foundation for a new tenant house. A landowner must submit the following information:

A. An application for conversion of an existing dwelling to a tenant house and for construction of a replacement dwelling house, completed and signed by each titled landowner;

B. An unmarked copy of the tax map, or boundary survey, which outlines the entire Foundation district or easement property;

C. A second copy of the tax map, which shall include the following:

(1) Property boundaries of the Foundation district or easement property;

(2) Location of, and access to, the proposed replacement dwelling house;

(3) Location of, and access to, the existing dwelling which will house the tenant or tenants which made it necessary to construct a replacement dwelling house; and

(4) Location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;

D. A letter of recommendation from the local agricultural land preservation advisory board;

E. A written statement from the local planning and zoning office or the county program administrator indicating that the proposed replacement dwelling house may be constructed under current local regulations;

F. A signed statement from the landowner acknowledging that the replacement dwelling may only be approved and used for the current or future landowner's personal residential use; and

G. A written statement or plan from the landowner stating the size of the proposed replacement dwelling house as 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, and porches not used as living space, garages, or unenclosed decks.

COMAR 15.15.03.9999  
.9999. Administrative History

## Credits

### Effective date:

Regulations .01—.04 adopted as an emergency provision effective October 11, 2002 (29:23 Md. R. 1808); adopted permanently effective February 3, 2003 (30:2 Md. R. 76)

Regulation .02 amended effective July 17, 2008 (35:14 Md. R. 1247)

Regulation .03A, B amended effective July 17, 2008 (35:14 Md. R. 1247)

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Regulations .01—.04 repealed and new Regulations .01—.06 adopted effective March 7, 2011 (38:5 Md. R. 319)

## 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**

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 15.15.04.9999

.9999. Administrative History

## **Credits**

Effective date:

Regulations .01—.05 adopted as an emergency provision effective July 20, 2005 (32:18 Md. R. 1517); adopted permanently effective November 7, 2005 (32:22 Md. R. 1758)

## CHAPTER 05 EASEMENT TERMINATION REQUESTS

**Authority: Agriculture Article, §§2-504 and 2-514, Annotated Code of Maryland**

COMAR 15.15.05.01

.01. Purpose.

A. This chapter provides the process for an eligible 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. An easement may be reviewed for possible termination 25 years after the purchase of the easement, but only if the Board of Public Works approved the easement for purchase before October 1, 2004, unless the right to apply to terminate the easement has been waived in the deed of easement or in a subsequent written instrument.

C. As Agriculture Article, §2-514, Annotated Code of Maryland, provides, a termination must 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 county's responsibility is to consider factors relating to local land use policies, while the Foundation's separate 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. If either the county or the Foundation deny any termination request, an easement may not be terminated.

COMAR 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) "County governing body" means the board of county commissioners or, in a charter county, the county executive and the county council of a county.

(3) "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.

(4) "Foundation" means the Maryland Agricultural Land Preservation Foundation.

(5) "Landowner" means the fee simple owner of the land that is subject to easement restrictions.

(6) "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 any expenditures or costs to construct farm structures, to acquire the land itself, or to service any debt or financing incurred to acquire the land.

(7) "Secretary" means the Secretary of Agriculture.

COMAR 15.15.05.03

.03. Landowner's Request for Easement Termination.

A. Request. A landowner, whose farm is subject to an easement, may submit a written request to the Foundation to review the easement for possible termination.

B. Form. A landowner's written 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 the easement.

C. Restriction. A landowner's request for termination review may not be considered by the Foundation unless 25 years have passed from the date that the Foundation purchased the easement.



COMAR 15.15.05.04  
.04. County 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. County Agricultural Advisory Board Recommendation. Upon receipt from the Foundation of a landowner's request for review to terminate an easement, 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 use regulations, local comprehensive planning, and any local priorities for the preservation of agricultural land.

C. County Public Hearing. 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, the county governing body shall conduct a public hearing, after adequate public notice, to consider approving or disapproving the termination of the easement based on the following criteria:

- (1) The county agricultural preservation advisory board's recommendation regarding the termination request;
- (2) Local comprehensive planning and zoning considerations;
- (3) Local priorities to preserve agricultural land;
- (4) Local patterns of development; and
- (5) Other land use considerations.

D. County Decision. After conducting the public hearing required in §C of this regulation, the county governing body shall prepare a written decision on the landowner's termination request, which decision shall either:

- (1) Deny the termination request and end the termination review process; or
- (2) Approve the termination request for additional review by the Foundation.

COMAR 15.15.05.05  
.05. Foundation Review.

A. The Foundation shall review a landowner's termination request only if the county governing body approves a landowner's termination request in writing.

B. The Foundation's review of a landowner's termination request requires the Foundation Board of Trustees members at large to determine, in writing, whether profitable farming is feasible on the land, which determination may be based on the following:

(1) An expert opinion as to whether profitable farming on the land is feasible;

(2) The effect of any nonagricultural development adjacent to the land;

(3) Whether markets exist for any agricultural products that can be produced on the land;

(4) The profitability of nearby farms, if such information is readily available to the Board of Trustees members at large;

(5) Any information the landowner asks the Board of Trustees members at large to consider;  
or

(6) Any additional information the Board of Trustees members at large deem relevant to determine if it is feasible to farm the land in a profitable manner.

C. To assist with the determination of whether profitable farming is feasible on the land, the landowner may request the Foundation Board of Trustees members at large to conduct a hearing, which request shall be submitted in writing to the Foundation within 30 days after the date of the county governing body's written decision approving the landowner's termination request. If the landowner fails to request a hearing within the required time period, no hearing shall be required.

D. Standard of Review for Foundation Consideration of Termination Request.

(1) To determine whether profitable farming is feasible on the land, the Foundation Board of Trustees members at large shall presume that it is feasible to farm the subject land in a profitable manner and the landowner has the burden to rebut this presumption.

(2) The standard by which feasibility of profitable farming is measured is based on whether any landowner can profitably farm the land in question and not whether the particular landowner seeking termination has been able to profitably farm the land.

E. Foundation's Decision. The Foundation Board of Trustees members at large shall prepare a written decision regarding the landowner's termination request, which decision shall either:

(1) Deny the termination request and end the termination review process; or

(2) Approve the termination request for additional consideration by the Secretary and the State Treasurer.

COMAR 15.15.05.06

.06. Secretary and State Treasurer Review.

A. The Secretary and State Treasurer shall consider a landowner's termination request only if the county governing body and the Foundation Board of Trustees members at large approve a landowner's termination request in writing.

B. An easement may only be terminated if both the Secretary and the State Treasurer approve the request for termination, which approval or denial may be provided by the Secretary and the State Treasurer's designees serving on the Foundation's Board of Trustees.

COMAR 15.15.05.07

.07. Appeal.

The landowner seeking the termination request may appeal any decision of the county governing body, the Foundation Board of Trustees members at large, the Secretary or the State Treasurer to the circuit court of the county where the land is located.

COMAR 15.15.05.08

.08. Landowner Repurchase of Easement.

A. Order of Two Appraisals at Landowner's Expense. Within 10 days after both the Secretary and the State Treasurer approve the termination request, the landowner shall remit good funds as instructed by the Foundation to pay for the cost of two appraisals to determine the fair market value of the easement land, which appraisals shall be ordered by the Department of General Services. The date of valuation shall be the date that the Foundation Board of Trustees members at large approved the landowner's termination request. If the Department of General Services must also determine the agricultural value of the land as provided by §C(1) of this regulation, it shall order two appraisals of the agricultural value of the land at the same time it orders the two appraisals to determine the fair market value of the easement land. The landowner shall pay the costs to acquire all such appraisals.

B. Determining Fair Market Value. After review of the two appraisals of the subject property, the Department of General Services shall determine the land's fair market value and promptly notify the Foundation in writing of its determination. For purposes of this regulation, the fair market value of 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 it were not subject to an agricultural land preservation easement.

### C. Determining Agricultural Value.

(1) Based on the Ordered Appraisals. If, at the time the Foundation acquired the easement, the land's agricultural value was determined by an appraisal, the Department of General Services shall determine the land's agricultural value and promptly notify the Foundation of its determination. For purposes of this regulation, the agricultural value of land, as determined by an appraisal, is the price as of the valuation date 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 as a farm unit, to be used for agricultural purposes.

(2) Based on the Agricultural Formula. If, at the time the Foundation acquired the easement, the land's agricultural value was determined by the agricultural formula, the Foundation shall use the formula in effect at the time for determining the land's agricultural value.

D. The Foundation shall notify the landowner of the land's approved fair market value and agricultural value after:

(1) The Department of General Services has notified the Foundation of these approved values as provided in §§B and C(1) of this regulation; and

(2) If applicable, the Foundation determines the land's agricultural value as provided in §C(2) of this regulation.

E. Election to Repurchase. As required by Agriculture Article, §2-514(i)(4)(ii), Annotated Code of Maryland, the landowner has no more than 30 days following the notification set forth in §D of this regulation to elect to repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land. Such election notice must be received by the Foundation, in writing, within 30 days following the date of the notification set forth in §D of this regulation.

F. Repurchase. The landowner has no more than 180 days following the notification set forth in §D 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, subject to Board of Public Works approval, as set forth in State Finance and Procurement Article, §10-301 et seq., Annotated Code of Maryland.

G. Upon receipt of payment of all required funds as specified in §§A and F of this regulation, the Foundation shall prepare, execute, and deliver to the landowner for recording a Termination of Easement.

COMAR 15.15.05.09

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

If a request for termination is denied, or if the landowner fails to elect to repurchase the easement within 30 days of the notification required under Regulation .08D of this chapter, or fails to repurchase the easement within 180 days of the same notification, the landowner may not again request termination of the easement until 5 years after the last request for termination.

COMAR 15.15.05.9999

**.9999. Administrative History**

**Credits**

Effective date: November 7, 2005 (32:22 Md. R. 1758)

Regulation .07 amended effective March 3, 2014 (41:4 Md. R. 305)

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Regulations .01—.09 repealed and new Regulations .01—.09 adopted effective October 8, 2018 (45:20 Md. R. 919)

## CHAPTER 06 LOT RELEASED FROM EASEMENT FOR LANDOWNER OR CHILD

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

### COMAR 15.15.06.01

#### .01. Scope.

A. This chapter applies to any lot released by the Foundation to an eligible landowner or landowner's child for the landowner's or landowner's child's use and occupancy on a farm. This chapter describes release procedures and explains when the lot may be conveyed.

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 eligible landowner who sold or transferred an easement to the Foundation or for the child of a landowner or landowners, thereby allowing immediate family members to live on the farm.

C. Except as provided by this chapter, these dwellings or lots may not be transferred or conveyed to any other person.

D. This chapter does not apply to an unrestricted lot released by the Foundation from the deed easement.

### COMAR 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 an eligible 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 an eligible 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 or landowners who sold or transferred an agricultural land preservation easement to the Foundation.

COMAR 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 or a landowner's child is eligible to construct a dwelling on a lot on the farm for the bona fide use and occupancy of the landowner or the child.

COMAR 15.15.06.04

.04. Lot Approval and Release.

A. Before a lot may be released from an easement's restrictions for the construction of a dwelling house, the landowner shall submit a signed application to the Foundation. The application shall include:

(1) A declaration that the lot and dwelling are for the use only of the landowner or the landowner's child, whichever is the case;

(2) If the application is for an owner's lot and there is more than one landowner, a statement acknowledging that the right to request release of the eligible owner's lot is being exercised;

(3) If the application is for a child's lot, a copy of the birth certificate of the landowner's child to prove that the landowner's child is a minimum of 18 years old at the date of the issuance of the preliminary release;

(4) A description of the land where the dwelling is to be located, along with proposed access to the dwelling;

(5) A survey plat or tax map that shows the precise location of the proposed lot; and

(6) Signed statements indicating approval of the lot from both the local agricultural land preservation advisory board and the county planning and zoning department.

B. Corporation or Similar Entity's Request for Child's Lot. The Foundation may not approve an application from a corporation, partnership, limited liability company, or other similar entity ("the entity") for an owner's or child's lot unless:

(1) At the time of the sale of the deed of easement, the entity is owned by family members who are actively engaged in the daily agricultural operations on the land (“the original family members”);

(2) At the time of the request for an owner’s lot or child’s lot, at least one of the original family members has retained an uninterrupted, continuous ownership interest in the entity or its successor since the sale of the deed of easement; and

(3) The entity is otherwise eligible to have a lot released.

C. Owner’s Lot. If an easement property has more than one landowner, only one lot may be released for the use and occupancy of an owner, regardless of how the land is titled (that is, as tenants in common, joint tenancy, tenancy by the entirety, or in an entity).

COMAR 15.15.06.05  
.05. Lot Release.

A. Two-Part Release.

(1) 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.

(2) After receiving payment for the lot, the Foundation will issue a preliminary release which conditionally releases the lot from the terms of the easement.

(3) The Foundation will issue a final release when the Foundation receives and certifies a nontransferable building permit in the name of the landowner or child for the construction of a dwelling house.

B. The preliminary release becomes void:

(1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or

(2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, unless extended by a majority vote of the Foundation Board of Trustees.

C. If the person for whom the release was intended occupies the dwelling before a final release is issued, the Foundation may give credit for the occupancy toward the 5-year period referred to in Regulation .06 of this chapter.



.06. 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 convey or lease the improved lot to any person until 5 years after the effective date of the final release. The Foundation may require evidence that the person for whom the lot was released occupies the dwelling for the 5-year period.

B. Before the expiration of the 5-year period, the Foundation may only approve a landowner's or child's request to convey a lot improved with a dwelling 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 the child for whom the lot was released;

(3) A decree of divorce where the landowner or child is ordered to sell or convey the lot as part of a bona fide property settlement;

(4) A change of employment location of the landowner or child for whom the lot was released if 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.

C. For purposes of illustration by way of example and not limitation, the Foundation may require the owner of the released lot to convey the lot to the current owner of the land encumbered by the easement from which it was released and subject the lot to the terms of the easement, if:

(1) A dwelling constructed upon the lot is conveyed or leased to a person other than the owner or child for whom the lot was released before the expiration of the 5-year period;

(2) The lot is conveyed or leased to another person prior to the construction of a dwelling for the personal residential use of the landowner or child;

(3) A dwelling is not constructed upon the lot during the lifetime of the landowner or child for whom the lot was released; or

(4) The landowner or child for whom the lot was released relinquishes the right to construct a dwelling on the lot.

COMAR 15.15.06.07  
.07. Easement Violation.

A person who conveys, or receives, a lot in violation of this chapter is in violation of Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, the terms of the agricultural land preservation easement applicable to the farm, and the terms of the applicable release.

COMAR 15.15.06.9999  
.9999. Administrative History

## Credits

Effective date:

Regulations .01—.06 adopted as an emergency provision effective July 17, 2006 (33:17 Md. R. 1435); adopted permanently effective November 6, 2006 (33:22 Md. R. 1733)

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Chapter revised effective July 8, 2013 (40:13 Md. R. 1076)

## 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**

### COMAR 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.

### COMAR 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.

### COMAR 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.

COMAR 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 this statement is requested by the Foundation.

COMAR 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.

COMAR 15.15.07.9999

.9999. Administrative History

**Credits**

Effective date: November 3, 2008 (35:22 Md. R. 1959)

## CHAPTER 08 INSTALLMENT PURCHASE AGREEMENT GRANT PROGRAM

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

### COMAR 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.

### COMAR 15.15.08.02

#### .02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "County" means any county containing productive agricultural land that is actively farmed and that meets the criteria for land for easement purchase by the Maryland Agricultural Land Preservation Foundation.

(2) "Easement" means an agricultural land preservation easement as defined by COMAR 15.15.01.01-2.

(3) "Eligible county" means a county as provided in this chapter that has been approved by the Maryland Agricultural Land Preservation Foundation for a county IPA program, pursuant to Regulation .04A of this chapter.

(4) "Escrow closing" means the date when all documents have been executed in connection with the sale of an easement.

(5) "Foundation" means the Maryland Agricultural Land Preservation Foundation.

(6) "IPA" means an installment purchase agreement between a landowner and an eligible county or the Maryland Agricultural and Resource-Based Industry Development Corporation to purchase an easement by:

(a) Payment of semiannual interest at a fixed interest rate on the outstanding balance of the easement purchase price; and

(b) Payment of the outstanding balance of the easement purchase price in one or more installments over a stated term of years.

(7) "Landowner" means the fee simple owner of land that is subject to easement restrictions.

(8) "MARBIDCO" means the Maryland Agricultural and Resource-Based Industry Development Corporation.

(9) "MOU" means a memorandum of understanding that states the duties and responsibilities between the Foundation and an eligible county as to grants to purchase an easement through an IPA program.

(10) "Settlement" means the date established at escrow closing, when interest on any installment purchase agreement begins to accrue.

COMAR 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.

COMAR 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 IRA 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.

COMAR 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.

COMAR 15.15.08.9999  
.9999. Administrative History

## **Credits**

Effective date: July 17, 2008 (35:14 Md. R. 1247)

## CHAPTER 09 CIVIL PENALTY STANDARDS

Authority: Agriculture Article, §2-519, Annotated Code of Maryland

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 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.

COMAR 15.15.09.07

.07. Violation Date.

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

COMAR 15.15.09.9999

.9999. Administrative History

## Credits

Effective date: May 17, 2010 (37:10 Md. R. 724)

## CHAPTER 10 CONFIDENTIAL RECORDS

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

### COMAR 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.

### COMAR 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.

### COMAR 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.

### COMAR 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.

COMAR 15.15.10.9999  
.9999. Administrative History

## **Credits**

Effective date: May 17, 2010 (37:10 Md. R. 724)

## CHAPTER 11 CORRECTIVE AGRICULTURAL LAND PRESERVATION EASEMENTS

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

COMAR 15.15.11.01

### .01. Scope.

This chapter establishes the criteria and procedure for entering into a corrective easement on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

COMAR 15.15.11.02

### .02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Agricultural Subdivision.

(a) "Agricultural subdivision" means a division of land for an agricultural purpose.

(b) "Agricultural subdivision" includes the lease of any part or parts less than 100 percent of the total parts of the land for a term in excess of 20 years.

(2) "Boundary line adjustment" means a change in the legal description contained in the Deed of Easement for the purposes of this chapter.

(3) "Corrective easement" means an amendment to an existing easement, an overlay easement over an existing easement, or, in the case of agricultural subdivision, a modification to an existing easement to create two or more separately enforceable easements.

(4) "Easement violation" means any action prohibited by, or a failure to act as required by, the agricultural land preservation easement, Agriculture Article, §2-501 et seq., Annotated Code of Maryland, or COMAR 15.15.

(5) "Exchange" means that land of equal or greater value in terms of acreage and soil types is brought under easement in consideration of land of equal or lesser value being released.

(6) "Landowner" means the person or entity owning the land subject to the easement.



COMAR 15.15.11.03

.03. Criteria.

A. Approval. The approval for a corrective easement by the Foundation is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis. A request shall be reviewed to determine if the proposed corrective easement will either enhance or have no effect upon any agricultural operation being conducted upon the land. A corrective easement may be used to adjust boundary lines, resolve easement violations, or accommodate a plan that the Foundation has determined will benefit the agricultural operations on the land encumbered by an easement, and may include such other additional terms, conditions, waivers, or restrictions that the Foundation deems appropriate to protect the agricultural viability of the farm.

B. Form of Corrective Easement. A corrective easement may be titled "Amendment to Easement", "Amendment and Grant to Easement", or "Corrective Easement." A corrective easement may also take the form of an "Overlay Easement" when, in the opinion of the Foundation, the existing easement may not be amended because all necessary parties cannot be joined.

C. Boundary Line Adjustment.

(1) If the proposed corrective easement involves the adjustment of boundary lines and part of the land encumbered by the easement is to be released, then:

(a) An equal or greater amount of land of equal or better soil types shall be added to the land under easement;

(b) The value of the easement will not be diminished by the proposed exchange;

(c) The proposed exchange shall be approved by the Board of Public Works; and

(d) The landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary on both the land under easement and the land to be added by corrective easement.

(2) If the proposed corrective easement involves the adjustment of boundary lines and no part of the land encumbered by the easement is to be released, then the Foundation may approve the corrective easement if it will either enhance or have no effect upon the agricultural operations being conducted upon the land. The Foundation may not pay additional consideration for land gained by any corrective easement without Board of Public Works approval.

(3) If the proposed corrective easement only involves the correction of an error in the legal description contained in the easement, the Executive Director of the Foundation may approve the correction of the error, with the concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture.

D. Resolving Easement Violations. If the Foundation approves a corrective easement in order to resolve a violation of the easement, the landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to cure the violation.

E. Accommodation of a Plan to Benefit the Agricultural Operation.

(1) If the Foundation approves a corrective easement in order to accommodate a plan to benefit the agricultural operation, the landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to accommodate the plan.

(2) If the Foundation approves an agricultural subdivision under the provisions of COMAR 15.15.12.01 et seq., the approval is considered to be an accommodation of a plan to benefit the agricultural operation and shall constitute an approval for corrective easements.

(3) A landowner's application to waive the right to request termination under Agriculture Article, §2-514, Annotated Code of Maryland, and to amend the easement to so specify, is considered to be an accommodation of a plan to benefit the agricultural operation. The Executive Director of the Foundation shall automatically approve the request, with the concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture.

F. Previously Approved Agricultural Subdivision. If, prior to the enactment of this chapter, the Foundation approved an agricultural subdivision of the land, without requiring all owners of the divided parcels to execute corrective easements to recognize the approved divided parcels, all owners of the divided parcels shall agree to the proposed amendment of an easement. If all owners do not agree, the corrective easement may take the form of an overlay easement from the landowners making the request for a corrective easement.

G. Single Tax Parcel. If possible, land that has been approved for corrective easement which is comprised of more than one tax parcel shall be consolidated into a single tax parcel with identification number. In the event of approval of an agricultural subdivision, if possible, each resulting subdivided parcel shall be a single tax parcel with identification number.

H. Existing Easement Violations. The Foundation may refuse to approve a request for a corrective easement if an easement violation exists upon the land.

#### COMAR 15.15.11.04

#### .04. Corrective Easement Application Procedure.

Before the Foundation may consider a request for a corrective easement, a landowner shall submit the following:

A. An application, completed and signed by each titled landowner to all of the land encumbered by the easement, which addresses the criteria in Regulation .03 of this chapter;

B. An unmarked copy of the tax map or boundary survey which outlines the entire easement land;

C. A second copy of the tax map which shall include the following:

(1) Boundaries of the easement land;

(2) If applicable, the location of the proposed change in boundary lines, and the amount of acreage involved; 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:

(1) The reason for the request and an explanation of how the corrective easement will enhance or have no effect upon the agricultural operations;

(2) The name, address, email address, and telephone number of all landowners whose lands are involved in the request; and

(3) Who will pay for the costs of the transaction;

E. A written statement from the county program administrator describing:

(1) The current overall farm operation and whether the proposed corrective easement will enhance or will have no effect upon the agricultural operations; and

(2) If applicable, whether an exchange of land is permissible under county subdivision regulations; and

F. A letter of recommendation from the local agricultural land preservation advisory board.

#### COMAR 15.15.11.05

#### .05 Requirements upon Approvals.

A. A landowner may not proceed with plans pursuant to the approval until the corrective easement has been recorded among the land records in the county in which the land is located, unless the Foundation issues a letter permitting the landowner to proceed.

B. Boundary Line Adjustment.

(1) If the Foundation approves the request for corrective easement for boundary line adjustment, the landowner shall submit to the Foundation 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the land area to be released from the easement, if any, and the land area to be encumbered by the easement, along with separate written metes and bounds descriptions of those areas.

(2) If the Board of Public Works approves the request, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

C. Agricultural Subdivision. In cases of agricultural subdivision, the landowners shall follow the requirements and procedures provided in COMAR 15.15.12.05B.

D. Other Corrective Easements. If the request is approved, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

E. If the funds and documentation required by this regulation are not provided by the landowner to the Foundation within 3 years of Foundation board approval, then, unless an extension request is submitted within 3 years and approved by Foundation staff, the approval is void.

## **Credits**

Amended Sept. 1, 2014.

COMAR 15.15.11.9999  
.9999. Administrative History

## **Credits**

Effective date:

Regulations .01—.05 adopted as an emergency provision effective June 8, 2011 (38:14 Md. R. 788); adopted permanently effective August 8, 2011 (38:16 Md. R. 945)

Regulation .05E adopted effective September 1, 2014 (41:17 Md. R. 971)

## CHAPTER 12 AGRICULTURAL SUBDIVISION

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

### COMAR 15.15.12.01

#### .01. Scope.

This chapter explains the policy of the Maryland Agricultural Land Preservation Foundation to regulate the subdivision of land encumbered by an agricultural land preservation easement, including the criteria, eligibility, and procedure for the approval of an agricultural subdivision of a farm.

### COMAR 15.15.12.02

#### .02. Purpose.

All of the land subject to an agricultural land preservation easement acquired by the Foundation is considered to be one parcel of land even if the total acreage comprises separately described parcels or government-assigned tax parcels or accounts. Common ownership of parcels constituting the farm fulfills the legislative intent to protect the future productivity and profitability of Maryland farms. To preserve the integrity of easement land, agricultural land preservation easements generally preclude a landowner from dividing the farm into smaller parcels or conveying less than the whole farm subject to easement without Foundation approval.

### COMAR 15.15.12.03

#### .03. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agricultural purpose" means the use of land to:

- (a) Provide sources of food and fiber; or
- (b) Produce, process, or store agricultural products.

(2) "Agricultural subdivision" means a division of land for an agricultural purpose.

(3) "Corrective easements" means a modification to an existing easement to create two or more separately enforceable easements.

(4) "Easement violation" means any action prohibited by, or a failure to act as required by, the agricultural land preservation easement, Agriculture Article, §2-501 et seq., Annotated Code of Maryland, or COMAR 15.15.

(5) "Land" means all that real property encumbered by the easement and intended to constitute one farm parcel, whether or not comprised of separately described parcels or government-assigned tax parcels or accounts.

(6) "Landowner" means the person or entity owning the land encumbered by the easement.

(7) "Subdivision" or "subdivide" means the division of land into two or more parts or parcels. Subdivision includes the lease of any part or parts less than 100 percent of the total parts of the land for a term in excess of 20 years.

COMAR 15.15.12.04  
.04 Subdivision Prohibition.

A. Prohibition. Except as approved by the Foundation as provided by this chapter and in COMAR 15.15.01.17C. and 15.15.06.01—.06, a landowner may not subdivide land encumbered by an easement, including the movement of interior boundary lines, or transfer or cause to be transferred, any part or parts separately from the total acreage of the land, voluntarily, involuntarily, by testamentary disposition, or by reason of foreclosure or bankruptcy.

B. Exception for Agricultural Subdivision. The Foundation may give written approval to a landowner's request for an agricultural subdivision of the land and separate ownership of the resulting divided parcels for reasons the Foundation considers sufficiently extraordinary to justify an exception to the prohibition against subdivision. The approval for an agricultural subdivision is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis to determine if, in the Foundation's opinion:

(1) The proposed agricultural subdivision serves an agricultural purpose;

(2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and

(3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent of each other.

C. Corrective Easements. If the Foundation approves an agricultural subdivision under this Chapter, approval shall be to accommodate a plan that the Foundation has determined will benefit the agricultural operation as required by Agriculture Article, §2-513, Annotated Code of Maryland, and COMAR 15.15.11. Corrective easements are required to formalize the Foundation's approval. The corrective easements may include other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and the future profitability of resulting divided farm parcels. The landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to complete the agricultural subdivision.

D. Waiver of Right to Request Termination. For easements approved for purchase by the Board of Public Works prior to October 1, 2004, the owners of all of the resulting divided parcels of an approved agricultural subdivision under this chapter shall waive the right to request termination under Agriculture Article, §2-514, Annotated Code of Maryland, and shall agree to specify the waiver in the corrective easements.

E. Acreage and Soils Requirements for Agricultural Subdivision. The resulting divided parcels shall each be at least 50 acres, and each parcel shall meet the minimum soils requirement, as provided by COMAR 15.15.01.03D.

F. Exceptions to Acreage Requirement. The Foundation may permit resulting divided parcels of less than 50 acres of land if:

(1) The resulting parcel of less than 50 acres continues to meet minimum soil requirements as provided by COMAR 15.15.01.03D independently of the original farm and one of the following conditions exists for the resulting divided parcel comprised of less than 50 acres:

(a) The Foundation determines that there exists a physical separation of land, created by:

(i) Bodies of water;

(ii) Public roads; or

(iii) Features that significantly restrict the movement of agricultural equipment from one portion of the land to another;

(b) The resulting divided parcel comprised of less than 50 acres is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation, and both of the following occur:

(i) The owner amends the easement encumbering the adjoining land to encumber the resulting divided parcel, or an overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land; and

(ii) The resulting divided parcel and the adjoining land together meet minimum soils requirements as provided by COMAR 15.15.01.03D; or

(c) The resulting divided parcel comprised of less than 50 acres:

(i) Is conveyed to owners of adjoining land encumbered by an easement containing terms which are acceptable to the Foundation; and

(ii) An overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land.

(2) The resulting divided parcel or parcels remaining after the subdivision of the smaller parcel are at least 50 acres and continue to meet the minimum soils criteria, as provided by COMAR 15.15.01.03D.

G. Tenant House. If a tenant house was previously approved by the Foundation under COMAR 15.15.03 and it currently exists upon the land, an agricultural subdivision may be approved only if the following are met:

(1) The resulting divided parcel on which the tenant house is situated is at least 100 acres, unless the Foundation approves otherwise according to COMAR 15.15.03.03 or §F of this regulation; and

(2) The corrective easement restricts the tenant house to the use of a tenant as that term is defined in COMAR 15.15.03.02.

H. Existing Easement Violation. The Foundation may deny a request for an agricultural subdivision if an easement violation exists upon the land.

#### COMAR 15.15.12.05

#### .05 Previously Unapproved Subdivision.

A. Violation. The subdivision of land without Foundation approval is an easement violation.

B. Procedure. Upon discovery of an unapproved subdivision, the Foundation may either require that the land be restored to its original configuration or it may consider accepting a subdivision request from the owners of all of the resulting divided parcels. In its consideration of whether to accept a request for agricultural subdivision, the Foundation may rely on the recommendation of Foundation staff and the county program administrator. If the Foundation decides to accept a request for an agricultural subdivision, the owners of all of the resulting divided parcels shall submit an application with the documentation required by this chapter. The Foundation shall then determine if the subdivision qualifies for the exception to the subdivision prohibition as provided in this chapter. If the Foundation does not approve the agricultural subdivision, the land shall be restored to its original configuration under the easement.

C. Requirements. An approval of the agricultural subdivision shall require that the owners comply with all of the requirements of this chapter, but, if any of the resulting divided parcels of the subdivision are less than 50 acres, the Foundation may waive the 50-acre requirement if:

(1) At the time of the subdivision:

(a) The Foundation's regulations permitted the resulting divided parcels to be less than 50 acres; or

(b) The subdivision met the requirements of Regulation .04F of this chapter.

(2) The subdivision served an agricultural purpose;

(3) The subdivision enhanced or had no effect upon the agricultural operations being conducted upon the land;



(4) The resulting divided parcels have sustained agricultural production independent of each other from the time of the subdivision;

(5) The resulting divided parcels still meet minimum soils requirements, as provided by COMAR 15.15.01.03D; and

(6) The landowners present evidence satisfactory to the Foundation to make a determination that the resulting divided parcels have sufficient potential to sustain agricultural production independent of each other in the future.

## Credits

Amended Sept. 1, 2014.

### COMAR 15.15.12.06

#### .06. Agricultural Subdivision Application Procedure.

Before the Foundation may consider a request for an agricultural subdivision, a landowner shall submit the following:

A. An application, completed and signed by each titled landowner to all of the land encumbered by the easement, which addresses the criteria in Regulation .04 of this chapter;

B. An unmarked copy of the tax map or boundary survey which outlines the entire easement land;

C. A second copy of the tax map which shall include the following:

(1) Boundaries of the easement land;

(2) The location of the proposed line or lines of subdivision, and the amount of acreage each resulting divided parcel is proposed to contain; and

(3) The location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;

D. A written statement from the landowner indicating:

(1) The reason for the request, including an explanation of how the agricultural subdivision serves the agricultural purpose, how it will enhance or have no effect upon the agricultural operations, and how the resulting divided parcels will be able to sustain long-term agricultural production, independent of each other;

(2) If any rights to a lot or lots have been reserved, but still unexercised, under the easement, a proposal detailing which resulting divided parcel or parcels are to be allocated those rights;

(3) The name, address, email address, and telephone number of all landowners whose lands are involved in the request; and

(4) The name of the individual or entity who will pay for the costs of the corrective easement transactions;

E. A written statement from the county program administrator describing the current overall farm operation, whether the proposed agricultural subdivision serves an agricultural purpose, whether it will enhance or will have no effect upon the agricultural operations, and whether the resulting divided parcels will be able to sustain long-term agricultural production, independent of each other;

F. A letter of recommendation from the local agricultural land preservation advisory board addressing the potential for continued agricultural use of each of the resulting divided parcels;

G. Written verification from the local tax assessment office that each of the resulting divided parcels continue to qualify for agricultural use assessment under Tax-Property Article, Annotated Code of Maryland;

H. A letter from the local planning and zoning office or the county program administrator that the requested subdivision is consistent with county planning and zoning regulations; and

I. If applicable, letters of support from organizations such as the Soil Conservation Service and Forest Service attesting to the long-term productive capabilities for each resulting divided parcel of less than 50 acres.

COMAR 15.15.12.07

.07 Requirements upon Approval.

A. A landowner may not proceed with plans pursuant to the approval until the corrective easements have been recorded among the land records in the county in which the land is situated, unless the Foundation issues a letter permitting the landowner to proceed.

B. If the Foundation approves the request, then the landowner:

(1) Shall submit to the Foundation, 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the resulting divided parcels of the land, along with separate written metes and bounds descriptions of those resulting divided parcels; and

(2) Shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .04C and shall furnish such other documentation as directed by the Foundation.

C. If the funds and documentation required by this regulation are not provided by the landowner to the Foundation within 3 years of Foundation board approval, then, unless an extension request is submitted within 3 years and approved by Foundation staff, the approval is void.

## **Credits**

Amended Sept. 1, 2014.

COMAR 15.15.12.9999  
.9999. Administrative History

## **Credits**

Effective date:

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Regulation .05C amended effective September 1, 2014 (41:17 Md. R. 971)

Regulation .07C adopted effective September 1, 2014 (41:17 Md. R. 971)

## CHAPTER 13 GUIDELINES FOR FOREST EASEMENT OVERLAYS

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

COMAR 15.15.13.01

### .01. Scope.

This chapter establishes the criteria and eligibility standards for the approval of a forest easement overlay on land subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation (the Foundation).

COMAR 15.15.13.02

### .02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Afforestation” means the establishment of tree cover on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover, as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland.

(2) Forest.

(a) “Forest”, as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland, means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.

(b) “Forest” includes:

(i) Areas that have at least 100 trees per acre with at least 50 percent of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger; and

(ii) Forest areas that have been cut but not cleared.

(c) “Forest” does not include orchards.

(3) “Forest easement overlay” means a perpetual restriction placed on an existing Foundation easement property to create, restore, or preserve forest, whether for current tax or other incentives, to bank credits under a forest mitigation banking plan, or to meet requirements prescribed by the State or local authority to mitigate activities elsewhere on the property consistent with the agricultural land preservation easement held by the Foundation.

(4) “Forest mitigation” means the process by which the environmental impact of various development activities, from road construction to residential housing, is mitigated or offset by the restoration, enhancement, creation, or retention of forested land elsewhere, as required by the Maryland Forest Conservation Act of 1991, Natural Resources Article, §§5-1601—5-1613, Annotated Code of Maryland.

(5) “Forest mitigation banking” means the intentional restoration or creation of forests undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits from future activities, as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland.

(6) “Forest stewardship plan” or “forest management plan” means a plan prepared by a Maryland-licensed professional forester designed to manage land for productive, sustainable woodland purposes.

(7) “Resource conservation purpose” means to preserve soil and natural resources, reduce sediment and nutrient runoff, or improve air and water quality through the implementation of one or more best management practices.

#### COMAR 15.15.13.03

#### .03. Eligibility.

A. To be eligible for consideration by the Foundation, a proposal for a forest easement overlay shall meet the requirements of a State or local forest conservation program, be approved by the applicable county’s planning authority, and be recommended by the county’s agricultural land preservation advisory board.

B. To be eligible for consideration by the Foundation, a proposal for a forest easement overlay shall be limited to 10 acres, or 10 percent of the total easement acreage, whichever is smaller, unless the Foundation determines otherwise. To be eligible, a forest easement overlay shall allow prescribed harvests.

C. A forest easement overlay for mitigation purposes shall offset development inside a priority funding area only, with the exception of mitigation required by a Foundation-approved lot release on the same easement property as described in §E of this regulation. Proposals for forest mitigation banking shall establish a reporting mechanism to the county and the Foundation for ensuring that credits, when taken, offset development in a priority funding area.

#### D. Resource Conservation.

(1) A forest easement overlay shall serve a legitimate resource conservation purpose under a soil conservation and water quality plan or forest stewardship plan.

(2) The proposed forest easement overlay shall:

(a) Contribute substantially to good land and environmental resource stewardship on the farm;

(b) Be an appropriate best management practice (BMP) to achieve the resource conservation objectives for the farm, based on Natural Resources Conservation Service (NRCS) standards and estimates;

(c) Be included in the soil conservation and water quality plan and a forest stewardship or management plan for the farm; and

(d) Permit sustainable forest stewardship practices, including prescribed harvests.

#### E. Mitigation for Residential Development.

(1) If a county requires on-site forest mitigation because of on-site residential development, the landowner shall so inform the Foundation at the time of the lot release request. In this case, a separate forest mitigation proposal is not required.

(2) If the lot release request is approved, the forest mitigation easement overlay document shall:

(a) Be submitted to the Foundation for review in advance of recordation;

(b) Be subordinate to the agricultural land preservation easement unless otherwise required; and

(c) Allow prescribed harvests unless harvesting is restricted under the soil conservation and water quality plan.

### COMAR 15.15.13.04

#### .04. County Application Procedure.

A. Before the Foundation may consider a proposal for a forest easement overlay, applicants shall first submit the following information to their county program administrator:

(1) A current soil conservation and water quality plan, developed by the local soil conservation district, that describes the resource conservation purpose served;

(2) For properties with 25 acres or more in contiguous woodland or where required by an underlying easement, a forest stewardship plan or forest management plan, developed within the past 10 years by a Maryland-licensed forester, which provides for sustainable forest stewardship and management practices, including prescribed harvests;

(3) If a soil conservation and water quality plan is not required because the property is 100 percent woodland, proof of a forest stewardship plan or forest management plan, developed within the last 10 years by a Maryland-licensed professional forester, describing the resource conservation purpose served; and

(4) A completed Foundation application, including an assessment of the following criteria:

(a) The restrictions that would be imposed on the current and future production options for the land;

(b) The potential effect of the forest easement on the ability of subsequent owners of the land to conduct profitable activities on the land;

(c) The amount of land proposed for forest easement;

(d) The productivity of the soil or soils; and

(e) The resource conservation purpose being served.

B. The county program administrator shall:

(1) Review the application and supporting documentation for completeness;

(2) Present the application and supporting documentation to the county agricultural land preservation advisory board for its recommendation;

(3) Present the application and supporting documentation to the applicable county's planning authority for approval; and

(4) Send the proposal to the Foundation if the county agricultural land preservation advisory board recommends the proposal and the applicable county's planning authority approves the proposal, with documentation verifying the recommendation and approval.

C. When the county agricultural land preservation advisory board reviews a forest easement overlay proposal, it shall consider the Foundation's criteria for review set forth in Regulation .05B and C of this chapter and convey the basis for its recommendation to the Foundation.

D. For forest mitigation proposals, the local government, whether it is the county program administrator or another responsible party chosen by the county, shall also identify in writing the type of development activity for which mitigation is required, locate the development activity on an appropriate map, inform the Foundation if the development activity is subject to the county's approval and, if it is, verify that the county either has approved the project or believes that the development project is consistent with the plans, ordinances, and regulations governing its approval.

#### COMAR 15.15.13.05

#### .05. Foundation Application Procedure.

A. Upon receiving a completed proposal from the county program administrator, the Foundation staff shall:

(1) Review the proposal for completeness;

(2) Submit the proposal to the Maryland Department of Agriculture's Office of Resource Conservation for a written opinion on the appropriateness of the forest easement overlay proposal;

(3) Submit the proposal, if it involves mitigation, to the Maryland Department of Planning for a written statement indicating whether the development to be facilitated by the forest mitigation is in a priority funding area, is consistent with the local comprehensive plan and State planning policy, and is not likely to encourage or support substantial further development in areas the Foundation is attempting to preserve; and

(4) Submit the complete proposal and staff recommendation to the Foundation's Board of Trustees.

B. After receiving the proposal and recommendation from the Foundation staff, the Board shall determine if the forest easement overlay is consistent with the Foundation's mission and is appropriate for the easement property. The approval for a forest easement overlay on a Foundation easement or district property is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis.

C. The Foundation shall also take into account the following criteria when reviewing a forest easement overlay proposal:

(1) The restrictions that would be imposed on the current and future production options for the land;

(2) The potential effect of the forest easement on the ability of subsequent owners of the land to conduct profitable activities on the land, compatible with the Foundation's easement;

(3) The amount of the land proposed for an easement overlay;

(4) The productivity of the soil or soils;

(5) The resource conservation purpose being served;

(6) The recommendation of the county agricultural land preservation advisory board; and

(7) Any other considerations appropriate and necessary to determine the proposal's compatibility with the Foundation's goals and objectives.

D. If the request is to establish a forest easement overlay for a forest mitigation bank, the Foundation shall approve or deny the request after considering the criteria set forth in this regulation. If the Board approves an overlay for forest mitigation banking, future mitigation credits may be approved by the Foundation staff but shall offset development in a priority funding area.

E. If the forest easement overlay request is for a property subject to an easement with a 25-year termination clause, the landowner shall amend the deed of easement to waive the right to request termination of the easement after 25 years and to clarify the perpetual nature of the easement. The waiver requirement of this section does not apply to a forest easement overlay



request if local law requires the request be made to offset the development of an on-site residential lot authorized under Agriculture Article, §2-513, Annotated Code of Maryland.

F. The forest easement overlay document shall be submitted to the Foundation for review in advance of recordation and be subordinate to the agricultural land preservation easement unless the Foundation determines that the State's interest in the land would be compromised by doing so.

COMAR 15.15.13.9999  
.9999. Administrative History

**Credits**

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Regulation .03B amended effective June 4, 2018 (45:11 Md. R. 579)

Regulation .05E amended effective June 4, 2018 (45:11 Md. R. 579)

## CHAPTER 14. RENEWABLE ENERGY GENERATION FACILITIES APPROVAL FOR A FARM SUBJECT TO AN AGRICULTURAL LAND PRESERVATION EASEMENT

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

### COMAR 15.15.14.01 .01 Scope.

This chapter explains the Foundation's criteria to approve an authorized renewable energy source (ARES) for commercial profit on a farm subject to an agricultural land preservation easement. The Foundation may only accept applications to approve an ARES on a farm subject to an agricultural land preservation easement before June 30, 2018. The Foundation may not approve any ARES on a farm subject to an agricultural land preservation easement after June 30, 2019.

### **Credits**

Adopted June 6, 2016.

### COMAR 15.15.14.02 .02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Authorized renewable energy source," or "ARES" means the following energy sources to generate electricity for commercial profit:

(a) Solar;

(b) Wind;

(c) Anaerobic digestion of poultry litter so long as the facility is placed on fallow land; and

(d) Anaerobic digestion of livestock manure so long as the facility is placed on fallow land.

(2) "Department" means the Maryland Department of Agriculture.

(3) "Easement" means an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

(4) "Easement area" means the real property subject to an easement held by the Maryland Agricultural Land Preservation Foundation, which property may consist of a single tax parcel or multiple tax parcels.

(5) "Facility agreement" means any lease, license, management agreement, or operating agreement between a farm owner and an ARES owner regarding an ARES on a farm.

(6) "Fallow land" means land that is plowed but left idle, uncultivated, or unplanted.

(7) "Farm" means a farm or other real property subject to an easement held by the Maryland Agricultural Land Preservation Foundation, which property may consist of a single tax parcel or multiple tax parcels.

(8) "Farm conservation plan" means a soil conservation and water quality plan for the farm, approved by a soil conservation district.

(9) "Foundation" means the Maryland Agricultural Land Preservation Foundation.

(10) "Raw materials" means poultry litter or livestock manure.

(11) "Recording agreement" means an agreement between the Foundation and a farm owner, to be recorded among the appropriate land records, that states the duties and obligations between both parties consistent with the requirements of this chapter.

## **Credits**

Adopted June 6, 2016.

### COMAR 15.15.14.03 .03 Eligibility Requirements.

The Foundation may not approve an application to place an ARES on land subject to an easement, unless all of the following conditions are satisfied as to the proposed ARES.

A. The ARES shall conform to all federal, State, and local laws, statutes and ordinances, unless such laws, statutes and ordinances are pre-empted by other law.

B. The local agricultural preservation advisory board established under Agriculture Article, §2-504.1, Annotated Code of Maryland, has provided a favorable recommendation to have the proposed ARES placed on the farm.

C. Any ARES that will create electricity from wind must satisfy the location and height restrictions provided in Regulation .06 of this chapter.

D. An ARES may not occupy more land than is necessary for its operation and maintenance, but in any case, the ARES may not occupy more than 5 percent or 5 acres, whichever is less, of the easement area. Permanent roads or structures necessary to operate and maintain the ARES are subject to the area restriction provided in this subsection. For any ARES conducting anaerobic digestion, the area restriction provided in this subsection shall also apply to effluent storage areas that are created to serve the ARES. Pre-existing effluent storage areas are not subject to the area restriction provided in this subsection.

E. The area designated for an approved ARES on a farm shall constitute one contiguous area and may not constitute multiple areas on the farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant.

F. An ARES may not interfere significantly with any agricultural use of the farm as determined by the Foundation in Regulation .05 of this chapter.

G. An ARES may not violate any federal, State, or local restrictions applicable to the funds used by the Foundation to purchase the easement.

H. If an ARES generates electricity by anaerobic digestion, a majority of the raw materials used to generate electricity from the ARES shall originate from the farm subject to the easement.

I. If an ARES generates electricity by anaerobic digestion, the ARES shall use only poultry litter or livestock manure.

J. If an ARES generates electricity by anaerobic digestion, the ARES shall be located on fallow land.

K. The farm owner and the ARES owner shall agree to make any ARES available for inspection by the Foundation during normal business hours (9 a.m. to 5 p.m., Monday through Friday, except federal and State holidays).

L. The Foundation may approve no more than one type of ARES for any farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant. If the Foundation approves more than one type of ARES for any farm, the area restriction of Regulation .03D of this chapter shall not be increased to account for multiple ARES.

## **Credits**

Adopted June 6, 2016.

COMAR 15.15.14.04  
.04 Application Requirements.

A farm owner shall submit a complete request to approve an ARES on a form approved by the Foundation no later than June 30, 2018. Each application submitted to the Foundation shall be complete and shall be signed by all farm owners and include all of the following:

A. A written statement providing:

- (1) The nature of the proposed ARES;
- (2) The name and contact information of the owner or operator of the proposed ARES, if owned or operated by any person or entity other than the farm owner;
- (3) The basis for determining that the proposed ARES will not interfere significantly with any agricultural use of the farm;
- (4) The method the farm owner or ARES owner will use to satisfy the bond requirement provided in Regulation .12 of this chapter;
- (5) The method the farm owner or ARES owner will use to comply with existing soil and water conservation plans and forest stewardship plans while the ARES is being constructed, installed or operated;
- (6) An acknowledgment that the farm owner and ARES owner agree to comply with all licensing and regulatory requirements to operate any proposed ARES; and
- (7) An acknowledgment that the farm owner and ARES owner agree to allow the Foundation's representatives to inspect the ARES and any related records during normal business hours (9 a.m. to 5 p.m., Monday through Friday, except federal and State holidays);

B. A courses and distances survey outlining the entire easement area, which survey shall include:

- (1) The proposed location of the ARES;
- (2) The number of acres subject to the easement;
- (3) A brief statement explaining how the proposed ARES satisfies the area restriction provided in Regulation .03D of this chapter;
- (4) The proposed location of any new permanent roadways to serve the ARES;
- (5) The proposed location of any temporary roadways used to construct the ARES;
- (6) The proposed location of any temporary staging areas used to construct the ARES; and
- (7) The location of, and access to, all dwellings, lot exclusions and farm buildings;

C. A written statement from the applicable county zoning administrator stating that the proposed ARES is a permitted use, subject to county laws, statutes, or ordinances, unless such laws, statutes, and ordinances are preempted by other law;

D. A written statement from the applicable local agricultural preservation advisory board providing a favorable recommendation to have the proposed ARES placed on the farm;

E. A written statement from the applicable local conservation district certifying that the farm complies with any water quality and soil conservation plan;

F. A written statement from the Department certifying that the farm currently complies with all applicable nutrient management requirements;

G. A written statement from the Department certifying that the farm owner currently complies with all applicable cost share agreements with the Department;

H. A written statement from the Foundation certifying that the farm owner currently complies with the applicable easement; and

I. A copy of all existing and proposed facility agreements regarding the ARES, which agreements shall include the following terms and information:

(1) The name of the lessee, licensee, manager, and/or operator of the proposed ARES;

(2) An acknowledgment by all parties to a facility agreement that any conflict between the facility agreement and the Foundation easement (as amended by the terms and conditions of the Foundation's approval to locate an ARES on a farm subject to such Foundation easement) shall be resolved in favor of the Foundation easement;

(3) An acknowledgment by all parties to a facility agreement that the facility agreement must comply with the terms and conditions of the Foundation's approval to locate an ARES on a farm; and

(4) A requirement that all parties to a facility agreement provide the Foundation with notice of any assignment, renewal, modification or termination of such agreements.

## **Credits**

Adopted June 6, 2016.

COMAR 15.15.14.05

.05 Application Evaluation Criteria.

The Foundation shall review each ARES application on a case-by-case basis to determine whether the proposed ARES complies with the requirements of this chapter for approval. In addition to the eligibility factors provided in Regulation .03 of this chapter, the Foundation shall also consider the following factors to determine whether the proposed ARES interferes significantly with any agricultural use of the farm.

A. The proposed ARES may not conflict with the terms of the deed of easement applicable to the farm, including but not limited to the following:

(1) The area approved for any ARES may not be subdivided from the farm, unless such area is part of an agricultural subdivision approved by the Foundation pursuant to COMAR 15.15.12; and

(2) The ARES may not have a detrimental impact on drainage, flood control, erosion control, forest stewardship, water conservation or soil conservation on the farm.

B. The proposed ARES may not negatively impact the agricultural use of a farm beyond the approved ARES area.

C. The proposed ARES shall be located and configured in a manner that maximizes the farm's agricultural use, meaning that:

(1) It may not be constructed or installed on prime farmland, consisting of United States Department of Agriculture Soil Capability Classes I, II, and III or Woodland Groups 1 and 2 and shall be located along field edges, unless the Foundation approves otherwise based on sufficient justification provided by the applicant;

(2) It shall be located and configured to avoid dividing larger fields into smaller fields and to avoid isolating areas of the farm so that they are no longer viable or efficient for agricultural use, unless the Foundation approves otherwise based on sufficient justification provided by the applicant; and

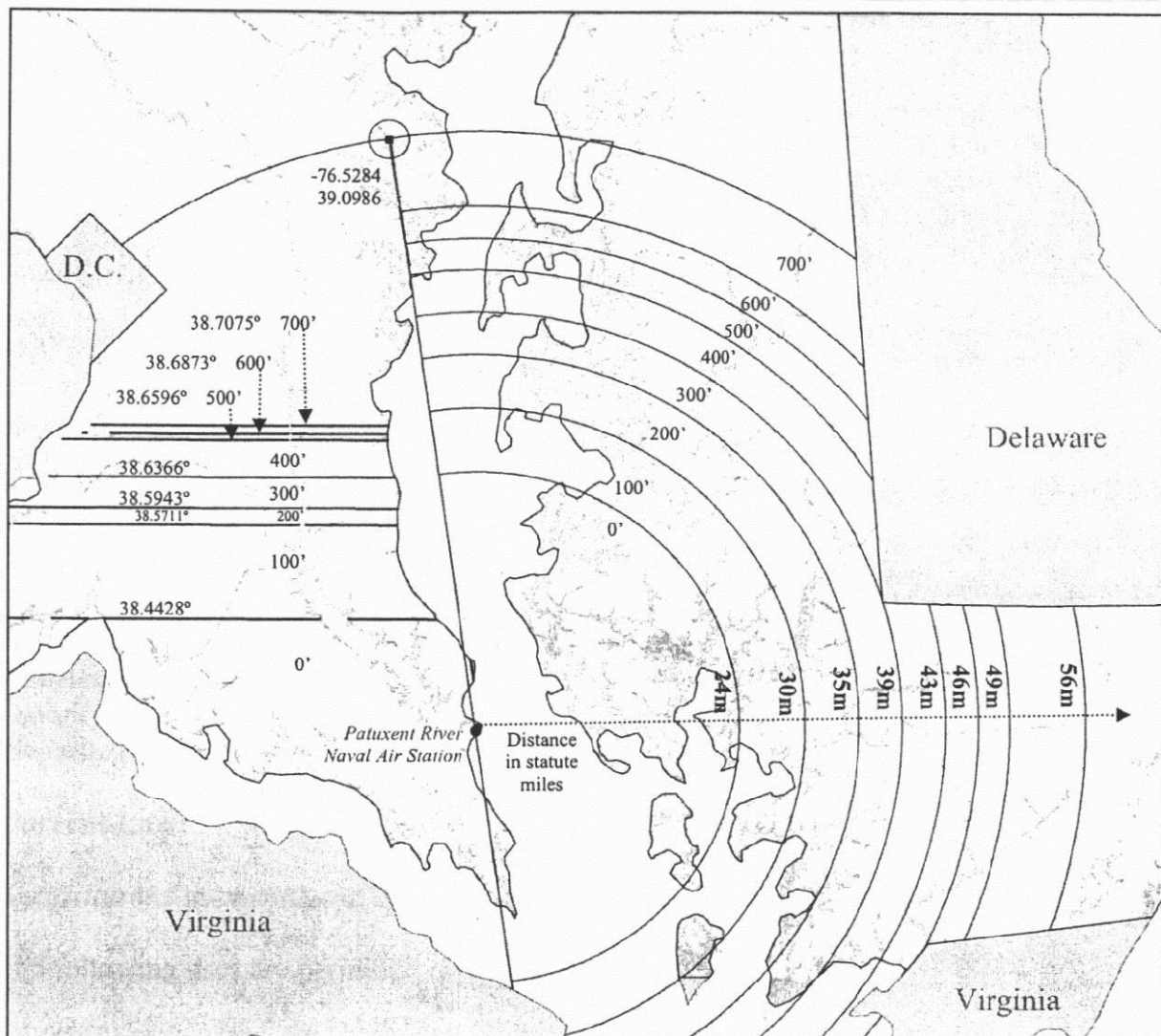
(3) In compliance with Regulation .03E of this chapter, the area approved for an ARES on a farm shall constitute one contiguous area and may not constitute multiple areas on the farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant.

## Credits

Adopted June 6, 2016.

COMAR 15.15.14.06  
.06 Wind Turbine Restrictions.

An ARES that generates electricity from wind may not be located in an area where the wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station. The following map identifies areas of the State, measured from the Reference Point on the Patuxent River Naval Air Station as defined by Agriculture Article, §2-513(c)(1)(III), Annotated Code of Maryland, where wind turbines are restricted by height or otherwise prohibited on a farm. A wind turbine located on a farm shall not exceed the specified height above ground level in the areas specifically described in Agriculture Article, §2-513(c)(5), Annotated Code of Maryland.





## Credits

Adopted June 6, 2016.

COMAR 15.15.14.07

### .07 Modifications to Foundation Approved ARES.

After the Foundation approves an ARES on a farm, the farm owner may need to modify the terms and conditions of the Foundation's approval to satisfy federal, State, or local requirements. If the farm owner seeks to modify the terms and conditions of the Foundation's approval for an ARES, the following process shall apply.

A. The farm owner shall apply to the Foundation to request the desired modifications to the approved ARES.

B. Foundation staff shall review the proposed modifications to the approved ARES and may either approve or deny the proposed modifications administratively. Foundation staff may recommend that the Foundation Board of Trustees consider and decide upon any proposed modification to an approved ARES.

C. If the farm owner disagrees with a staff administrative decision regarding desired modifications to the approved ARES, the farm owner may petition the Foundation Board of Trustees to consider the desired modifications. The Foundation Board of Trustees may grant or deny such petition.

## Credits

Adopted June 6, 2016.

COMAR 15.15.14.08

### .08 Required Recording Agreement.

If the Foundation approves an ARES on a farm, the farm owner and the Foundation shall execute a recording agreement, to be recorded among the appropriate land records, that states the duties and obligations between the parties, consistent with the requirements of this chapter. The recording agreement shall run with the land and bind all future owners of the farm. An approved ARES may not be constructed on a farm until a recording agreement is recorded in the appropriate land records. The recording agreement shall, at a minimum, include the following terms and conditions:

A. The construction, installation, and operation of the ARES shall take place only within the area approved by the Foundation and shall be conducted to ensure that the land can readily be returned to active agriculture use after the ARES is removed;

B. Site disturbance, land clearing, grading, top soil removal, subsoil removal, and soil compactions are allowed only if necessary to construct, install, operate, or maintain the ARES;

C. Topsoil from the approved ARES site may not be removed from the farm but shall be spread or stockpiled elsewhere on the farm as approved by the Foundation and consistent with a farm's approved conservation plan;

D. The use of concrete, asphalt, or other impervious surface material on the farm is prohibited within the approved ARES area except to mount wind turbines, solar panels, and any necessary associated equipment, or to construct and operate an anaerobic digestion facility or any system components;

E. The use of existing roadways to provide access to the ARES shall be maximized to avoid constructing new onsite roadways;

F. New permanent roadways on the farm to serve the ARES shall use gravel or other pervious material to minimize soil disturbance, water runoff, and soil compaction on the farm, and shall meet the following conditions:

(1) Such roadways shall be the minimum width necessary to accommodate construction traffic;

(2) Such roadways shall be no greater than 16 feet wide;

(3) If such roadways cross agricultural fields, they shall be located along ridge tops, hedgerows or field boundaries to the maximum extent possible;

(4) Such roadways shall be constructed so they are level with adjacent fields to facilitate crossing by farm equipment to the maximum extent possible; and

(5) To protect agricultural soils from damage, such roadways may not be constructed during wet conditions.

G. Temporary roadways to construct an ARES are permitted, provided that such roadways are prepared with gravel or other pervious material and such roadways are removed once the ARES starts to operate;

H. When it is not possible to use the approved open space of the ARES area on the farm for agricultural use, the same area shall be maintained with vegetative cover to prevent soil erosion and shall be managed to prevent weeds or other invasive species from growing or spreading to other areas of the farm;

I. During the construction, installation, operation, and maintenance of the ARES, appropriate measures shall be taken to ensure compliance with existing soil and water conservation plans and forest stewardship plans;

J. During the construction of the ARES, the following restrictions shall be implemented:

(1) All construction-related vehicle and equipment traffic and parking shall be restricted to an access road or designated area, unless prior written approval has been provided by the Foundation;

(2) Crane set-up and breakdown activities must be restricted to designated work areas on the farm;

(3) The farm owner shall dispose of all wire, bolts, and other unused material related to the ARES to ensure these objects do not mix with any soil; and

(4) All vehicles used to construct, serve or maintain any ARES shall not be serviced or washed on the farm, unless the Foundation approves otherwise; and

K. Any other terms and conditions the Foundation deems appropriate for the recording agreement.

## **Credits**

Adopted June 6, 2016.

COMAR 15.15.14.09

### **.09 Easement Amendment to Authorize an ARES.**

A. The Foundation may amend the terms of an easement approved by the Board of Public Works before June 30, 2014 to authorize an ARES on the farm if:

(1) The Foundation approves an application for an ARES on a farm in accordance with the requirements of this chapter; and

(2) The farm owner agrees to pay the cost of all title work, title insurance premiums, surveys, and documents necessary to complete the easement amendment;

B. For any easement amendment authorized by this regulation, the Foundation may require other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and future profitability of the farm.

## **Credits**

Adopted June 6, 2016.

COMAR 15.15.14.10

.10 Assessment of Costs and Fees.

A. Easement Amendment Costs. The Foundation shall assess and the farm owner shall agree to pay the costs of amending an agricultural land preservation easement approved for purchase by the Board of Public Works prior to June 30, 2014 in a manner that permits the uses allowed by this chapter. The costs shall be determined on a case-by-case basis.

B. Monitoring and Enforcement Fees. If the Foundation approves an ARES for a farm, the Foundation shall assess the farm owner an annual fee to reimburse the Foundation for monitoring and enforcement costs associated with the uses provided by this chapter. This fee is payable to the Foundation on January 1st of each year following the approval of the ARES, and may be modified from time to time. The fee shall continue to be assessed each year until the facility agreement is terminated, the ARES is dismantled and the land reclaimed for agricultural use, as determined by the Foundation.

## **Credits**

Adopted June 6, 2016.

COMAR 15.15.14.11

.11 Required Lease Payments to the Foundation.

A. If an ARES owner enters into a facility agreement with a farm owner, the ARES owner shall annually pay the Foundation 5 percent of any payment made to the farm owner as a result of a facility agreement. The payments required under this regulation shall be pro-rated for any partial year in which payments are made to the farm owner as a result of a facility agreement. Any facility agreement between an ARES owner and a farm owner must include an express term to require this mandatory payment to the Foundation.

B. Both the ARES owner and the farm owner shall provide the Foundation with a copy of all facility agreements concerning the ARES facility on the farm.

C. Both the ARES owner and the farm owner shall notify the Foundation, in writing, of any amendments, modifications, renewals or terminations to facility agreements concerning the ARES on the farm.

## **Credits**

Adopted June 6, 2016.

.12 Required Removal of ARES and Bond Requirement.

A. If an ARES is scheduled to stop operations, the farm owner and the ARES owner or operator shall notify the Foundation, in writing, no less than 30 days prior to the date when the ARES will cease to operate.

B. If the ARES owner enters into a facility agreement with the farm owner, the facility agreement shall require the ARES owner to remove all materials related to an ARES within 180 days of the last operation date of the ARES.

C. If an ARES is not subject to a facility agreement, the farm owner shall remove all materials related to the ARES within 180 days of the last operation date of the ARES.

D. The ARES, along with any related structures or equipment, shall be removed in a manner to ensure that the agricultural productivity of the soil is restored to the greatest extent possible, including but not limited to, the following:

(1) Removal shall be done in accordance with an approved conservation plan that addresses soil and water resource concerns;

(2) All facilities, structures and equipment shall be removed from the farm, including underground foundations and cables; and

(3) Excavated areas shall be backfilled with clean sub-grade material covered by a layer of topsoil, with the depth of restored topsoil consistent with the depth of topsoil of the surrounding land.

E. If the Foundation approves an ARES on a farm, and before construction of the ARES begins, the farm owner or ARES owner shall post a bond or other security in favor of the Foundation to ensure that all materials related to the ARES can be removed from the farm property as required by this regulation. The Foundation, in its sole and absolute discretion, may release the bond or security required by this regulation only after determining that all obligations to remove material related to the ARES from the farm property are satisfied. The bond or security required by this regulation may be satisfied by a comprehensive decommissioning bond posted by the ARES owner, so long as such bond satisfies the criteria of this regulation. The required bond or security shall satisfy the following requirements.

(1) The amount of the bond or security required by this regulation shall be sufficient to pay all costs to remove from the farm any material related to the ARES.

(2) The amount of the bond or security shall be established by a good faith estimate, prepared by a business qualified to remove the ARES from the farm. The farm owner or ARES owner is responsible for acquiring the good faith estimate.

(3) The bond or security shall account for inflation over the term of the facility agreement or the projected life of the ARES if there is no facility agreement.

(4) The bond or security shall be issued by an entity licensed to do business in Maryland.

(5) The bond or security shall expressly state that the Foundation may enforce the instrument in Maryland court under Maryland law.

Adopted June 6, 2016.

COMAR 15.15.14.13

**.13 Violations.**

A. A farm owner who violates any federal, State, or local laws regarding the operation of an ARES is in violation of the easement and is subject to civil penalties under Agriculture Article, §2-519, Annotated Code of Maryland.

B. A farm owner who violates the Foundation's approval conditions for an ARES is in violation of the easement and is subject to all legal remedies available to the Foundation to enforce the terms of the easement, including civil penalties under Agriculture Article, §2-519, Annotated Code of Maryland.

**Credits**

Adopted June 6, 2016.

COMAR 15.15.14.9999

**.9999. Administrative History**

**Credits**

Effective date: June 6, 2016 (43:11 Md. R. 635)

CHAPTER 15. Reserved.

There are no records which match your request.

## CHAPTER 16. Guidelines for Granting Overlay Easements and Rights-of-Way.

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

### COMAR 15.15.16.01

#### .01 Purpose.

This chapter establishes the criteria and eligibility standards for the approval of overlay easements and rights-of-way on land subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

### COMAR 15.15.16.02

#### .02 Eligibility.

After a landowner has sold an agricultural preservation easement to the Foundation, the landowner and subsequent landowners 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. The Foundation may permit an easement, right-of-way, or other servitude to be granted in land encumbered by an agricultural preservation easement, subject to conditions it deems necessary to protect and maintain the agricultural integrity of the farm under the following circumstances:

- A. If it is to service a lot released from the preservation easement restrictions under Agriculture Article, §2-513, Annotated Code of Maryland;
- B. If it is to service a lot or land permitted to be withheld from the agricultural preservation easement at the time of sale of the agricultural preservation easement to the Foundation;
- C. If it is to service an adjacent farm, provided, however, that its use is restricted to the movement of farm equipment or other items associated with farming;
- D. If it is a forest overlay easement that meets the criteria described in COMAR 15.15.13.01 et seq.;
- E. If the overlay easement documents a use existing at the time the agricultural preservation easement was sold to the Foundation;
- F. If the overlay easement serves telephone, television, gas, or other similar utility lines (but not access) to service the easement property or lots created under §A or B in this regulation;



G. If the overlay easement enhances a public road or bridge for the public health, safety, or welfare, where a minimal amount of land is required for such project, and the grantee of the proposed overlay easement has condemning authority;

H. If the overlay easement is used to install a utility easement for electricity, telephone, cable, oil, gas, or similar utility and the grantee of the proposed overlay easement has condemning authority; or

I. If the overlay easement is for another purpose not named in this regulation, and if failure to grant approval as determined by the Foundation would result in significant detrimental impact to the conservation values on an adjacent property. For purposes of this section, "conservation values" means critical natural habitat for native plant and wildlife species including but not limited to forests, riparian forested areas, wetlands, and greenways to buffer the Chesapeake Bay and its tributaries from pollution runoff.

#### COMAR 15.15.16.03

### .03 Conditions of Approval.

The following conditions apply to any overlay easement approved by the Foundation:

A. The proposed overlay easement may not prohibit any agricultural operation within the proposed overlay easement area, unless otherwise approved by the Board;

B. The proposed overlay easement shall have minimal interference on the overall farm operation;

C. If the proposed overlay easement is a right-of-way, its width shall be the minimum required by law;

D. When considering an overlay easement request, the Foundation shall consider the legislative intent as provided in Agriculture Article, §2-501, Annotated Code of Maryland; and

E. The Foundation may require any other conditions it considers appropriate on a case-by-case basis when approving any particular overlay easement proposal, including other conditions required by law or regulation.

#### COMAR 15.15.16.04

### .04 Application Requirements.

An application to the Foundation for overlay easement approval shall provide the following information:

A. A location map outlining the entire property, the overlay easement area, and access to the overlay easement area;

B. A draft of the proposed overlay deed of easement (not a generic copy) that shall clearly list all activities that may or may not be permitted;

C. If the Foundation requires, the proposed overlay easement form shall include language that would make the proposed overlay easement subordinate to the agricultural preservation easement;

D. If the application is for a right-of-way easement, information shall be provided regarding the State's or county's minimum width requirements;

E. A statement of the purpose of the request, including alternatives available to the proposed overlay easement;

F. Confirmation from the county planning and zoning office that the proposed overlay easement complies with local zoning requirements;

G. A recommendation from the local Agricultural Land Preservation Advisory Board; and

H. Any other information the Foundation considers necessary to consider the application.

COMAR 15.15.16.05

.05 Survey Requirement.

If the Foundation approves the proposed overlay easement, a survey of the overlay easement area, including access, shall be provided to the Foundation for approval before the overlay easement is signed and recorded.

COMAR 15.15.16.9999

.9999. Administrative History

**Credits**

Effective date: June 4, 2018 (45:11 Md. R. 580)