

MALPF FOREST MITIGATION POLICY AND PROCEDURES

It is acknowledged that some jurisdictions in the state do not allow forest conservation easements on land that already is under a preservation easement. Therefore, the following applies to land in those jurisdictions where a policy approved by the county executive/county council/county commissioners allows forest conservation easement overlays on land under a preservation easement.

OVERVIEW

When land is developed in Maryland, the Forest Conservation Act of 1991 requires retention, reforestation, or afforestation of specified amounts of forested land onsite or, if necessary, offsite. As more land is developed throughout the state, there are increasing requests to mitigate forestland away from development sites. The Maryland Agricultural Land Preservation Foundation (MALPF) is beginning to receive requests from easement landowners for forest mitigation on their farms for off-site development.

The Foundation's mission is to preserve productive farmland and woodland

- 1) for the continued production of food and fiber for all of Maryland's citizens;
- 2) to curb the expansion of random urban development;
- 3) to help curb the spread of urban blight and deterioration;
- 4) to help protect agricultural and forest land as open space;
- 5) to protect wildlife habitat; and
- 6) to enhance the environmental quality of the Chesapeake Bay and its tributaries.

It is recognized that forest mitigation on land under MALPF easements has benefits. It can be a best management practice (BMP) under a Soil Conservation and Water Quality Plan to insure that sensitive areas or land that is not suitable for field crops are not compromised or degraded. It can assure that the forest resource will remain forever for fiber production and for natural resource benefits, such as air quality, water quality, and wildlife habitat. It may provide income for the landowner that can help fund good stewardship of land and water resources and be an added incentive to enter the MALPF program.

At the same time, forest mitigation on land under MALPF easements may compromise or undermine the Foundation's goals by facilitating more, rather than less, development. It restricts the land to forestry in perpetuity, reducing the current and future landowners' flexibility in use of the land. It limits the opportunity to preserve other land that does not have a conservation easement. It may provide a pool of land for developers needing to mitigate. It may be viewed as double dipping, if the landowner is compensated for the mitigation after he/she has received compensation for the MALPF easement. By mitigating on existing forestland rather than on non-forested land, it does not advance Maryland's goal of "no net loss of forestland" in protecting the Chesapeake Bay watershed.

RECOMMENDATIONS

POLICY AND PROCEDURES

Considering the above benefits and disadvantages, it is recommended that the Foundation limit forest mitigation on MALPF easements and districts, but consider mitigation proposals from landowners on a case-by-case basis. The following procedures are designed to ensure that, when forest mitigation is allowed, it will be a legitimate means to practice good stewardship that complements the Foundation's interest in farm and forest production and will facilitate development that supports and does not compromise the Foundation's goals.

LAND ELIGIBLE FOR FOREST MITIGATION

For land under a MALPF easement to be eligible for consideration for forest mitigation, it must be other than Class I, II, or III unless, subject to the approval of the MALPF Board, mitigation on that land will serve a resource conservation purpose, e.g., buffering a stream, as part of a Soil and Water Quality Plan prepared by the Soil Conservation District.

RESOURCE CONSERVATION

A forest mitigation proposal must serve a legitimate resource conservation purpose under a Soil Conservation and Water Quality Plan. The proposed mitigation must

- contribute substantially to good land and environmental resource stewardship on the farm;
- be an appropriate best management practice (BMP) to achieve the resource conservation objectives for the farm, based on NRCS standards and estimates;
- be included in the Soil Conservation and Water Quality Management Plan and a Forest Stewardship Plan for the farm; and
- permit sustainable forest stewardship practices, including prescribed harvests.

The Maryland Department of Agriculture's Resource Conservation Operations (MDA-RCO) unit will be given the opportunity to review Soil Conservation District findings on these matters, advise the Foundation if it agrees with them or not, and if not, explain why.

COUNTY AGRICULTURAL ADVISORY BOARD RECOMMENDATION

The county agricultural land preservation advisory board must review a forest mitigation proposal and make a recommendation to the MALPF's Board of Trustees before a proposal will be considered by the Board. The county advisory board members should consider the factors established in this policy and procedure statement and should convey to the Foundation the basis for their recommendation.

DEVELOPMENT ACTIVITY AND ITS IMPLICATIONS FOR THE FOUNDATION'S GOALS

The development project(s) facilitated by a forest mitigation proposal must pass several screening tests.

- The local government (program administrator or responsible party, at the discretion of the county) must identify in writing the type of development activity for which mitigation is required, 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.

The Maryland Department of Planning (MDP) must provide a written opinion stating that the development project is in a Priority Funding Area recognized by the State, 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. [Note: March 25th, 2008, the Board discussed that if withheld acreage is not within a priority funding area and would require forest mitigation when developed, sufficient acreage must be withheld to accommodate that mitigation.]

APPLICATION PROCEDURE

The person applying for forest mitigation/forest mitigation banking is responsible for

- having a current Soil and Water Quality Plan, developed by the local Soil Conservation District, that describes the resource conservation purpose served by the mitigation,
- if applicable, having a Forest Stewardship Plan, developed within the last ten years by a professional forester licensed in Maryland,
- completing an application for the mitigation/banking [Attachment A], and
- submitting the application to the county MALPF program administrator.

The county MALPF program administrator is responsible for

- reviewing the application for completeness,
- presenting the application to the county agricultural advisory committee for its recommendation, and
- if the county agricultural advisory committee approves the application, sending the application to the Foundation.

The Foundation staff is responsible for

- reviewing the application for completeness;
- submitting the application to MDA's Resource Conservation Operations for an opinion on the appropriateness of the mitigation/mitigation bank;
- submitting the application 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
- submitting the application to the Board, complete with the required documents and statements [see Attachment A for details] and the staff recommendation.

BOARD ACTION

When it has received a recommendation from the Foundation staff, based on information from the county, the Soil Conservation District, the Maryland Department of Planning, and the Maryland Department of Agriculture's Resource Conservation Operations, the Board will determine if the mitigation is appropriate for the easement land and if the development project facilitated by the proposed mitigation is compatible with the Foundation's goals and objectives. The Board will consider:

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

- The potential effects of the forest mitigation on the ability of subsequent owners of the land to conduct profitable activities on the land, compatible with the Foundation's easement;
- The amount of land proposed for mitigation,
- The resource conservation purpose being served, if applicable,
- The recommendation of the county agricultural advisory board, and
- Whatever other considerations it finds appropriate and necessary to determine the proposal's compatibility with the Foundation's goals and objectives.

If the request is for forest mitigation banking, the Board will act on the concept after considering the criteria recommended herein and the county's forest conservation policies. If the mitigation banking request is approved by the Board, installment withdrawals from the mitigation bank can be approved by the MALPF staff and will not require additional Board approval.

ADDITIONAL CONSIDERATIONS

If the forest mitigation/mitigation banking easement overlay includes at least ten acres, or the forested land in the easement/district totals twenty-five contiguous acres (whether those forested acres are included in mitigation or not), the landowner shall be required to obtain and implement a Forest Stewardship Plan, prepared by a professional forester licensed in Maryland.

If the forest mitigation/forest mitigation bank request is for a property that was approved for MALPF easement purchase by the Board of Public Works prior to October 1, 2004, and is therefore eligible to apply for termination of the easement after twenty-five years, then the owner shall be required to amend the deed of easement to waive the right to request termination of the easement after twenty-five years, and clarify the perpetual nature of the easement.

Unless it determines that the State's interest in the land is somehow compromised by the doing so, if the Board approves a forest mitigation proposal or forest mitigation bank proposal, it will

- maintain the superior position of the Foundation's easement on the mitigation acreage, making appropriate adjustments in the forest conservation easement, and
- not concern itself with mitigation payments from the developer to the landowner.

The following language shall be included in the forest mitigation overlay easement:

"The parties hereto acknowledge that the land encumbered hereby has been encumbered previously by an Agricultural Land Preservation Easement (ALPE) in favor of the State of Maryland to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation (MALPF). It is the intent of the parties hereto to maintain the agricultural integrity of the land and to comply with Maryland statutes, regulations, and policies regarding said ALPE. The Grantee acknowledges that the ALPE is superior in title to this Easement Agreement, and that by permitting this Easement Agreement to encumber the property, AMLPF has not subordinated the ALPE to this Easement Agreement."