

## Maryland Agricultural Land Preservation Program

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# REVIEW AND APPROVAL CRITERIA AND PROCESS FOR LOT RELEASE REQUESTS

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This Fact Sheet details the criteria and procedure for the review and approval of lot releases from agricultural preservation easements held by the Maryland Agricultural Land Preservation Foundation (MALPF).

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### Procedures for the Release of Lots

No lots may be released until they are formally approved by the Foundation. Requests for the release of a lot will not be accepted if an easement application or easement settlement is pending. Please be aware that, in some situations, as much as three months may be required to release a lot from the restrictions of the easement. The procedures to release lots from the restrictions of the easement are as follows.

#### 1. **OWNER'S REQUEST**

You should submit a signed application to your local agricultural land preservation advisory board requesting the release of an owner's, child's, or unrestricted lot. The county program administrator can assist you with your application. The application must include the following.

- If the request is for an owner's or child's lot, a declaration that the lot and dwelling house are only for the personal use of the eligible landowner or landowner's child. You must provide the full name of the person for whom the lot is intended. If you are applying for release of a child's lot, you must include the birth certificate for the child named in the application.
- A description of the land to be disturbed by both the dwelling and access to that dwelling to help determine the impact that dwelling will have on the farming operation.
- A survey plat or tax map on which the precise location of the proposed lot is noted. To avoid unnecessary expense, it is recommended to survey the requested lot only after its location is approved in case the proposed location is not approved.
- A signed statement from the county planning and zoning department that verifies that the request meets local subdivision requirements.

#### 2. **LOCAL RECOMMENDATION**

The local agricultural land preservation advisory board will evaluate your application and make a recommendation to the Foundation based on the lot location's impact on the agricultural use of the land. (See below for the Foundation's "Guidelines on Lot Location.") The advisory board will forward its

recommendation in a letter to the Foundation including your application and the supporting documentation.

3. **FOUNDATION REVIEW**

The Foundation will review the lot release request based primarily on its proposed location and its impact on agricultural use of the land. (For the "Guidelines for Lot Location," see below.) Foundation approval of a proposed lot location will formally document your intention to release a lot from the easement. Once approved, you will be requested to send a plat and a metes and bounds description of the lot in recordable size as prepared by a registered land surveyor at your expense. You will also be required to pay back the amount you were paid by the Foundation for the easement on that acre. There is no interest or additional charge for the payback, and the amount will be stated in the approval letter.

4. **THE PROCESS BY WHICH A BUILDING LOT IS RELEASED FROM EASEMENT RESTRICTIONS**

For owner's and child's lots on easement properties, a two-stage release from easement process occurs after certification that the landowner or child of the landowner is eligible to have a lot released and the lot release is approved by the Foundation.

- **Preliminary Release.** The Foundation will issue a Preliminary Release which is recorded at the Foundation's expense. The Preliminary Release allows the landowner to apply for a non-transferable building permit and arrange construction financing. The Preliminary Release outlines the conditions for the final release of the property and becomes void upon the death of the person for whose benefit the release is intended if the Foundation has not yet received a non-transferable building permit. The Preliminary Release will expire three years from its recordation date if the landowner has not acquired and submitted to the Foundation a non-transferable building permit.
- **Final Release and Agreement.** The Final Release and Agreement will be issued by the Foundation and recorded at the landowner's expense when the Foundation receives and certifies a non-transferable building permit in the name of the landowner or child of the landowner for the construction of a dwelling house.
- **Five-Year Transfer Restriction.** All Release documents for restricted lots (child's, owner's, and family lots) will have language included that legally restricts the transfer of the lot to another party for five years without permission of the Foundation's Board of Trustees.

For unrestricted lots on easement properties, the release from easement occurs after certification that the owner is eligible to have the lot released, the lot release is approved by the Foundation, the Foundation receives a plat and a metes and bounds description of the lot in recordable size as prepared by a registered land surveyor at landowner expense and any required payback. The release will be issued by the Foundation and recorded at the landowner's expense.

All documents must be signed and notarized by all parties, be recorded in the land records of the county where the land is located, and will bind all future owners. The Foundation staff does everything possible to expedite the processing of legal documents and cannot accept requests to expedite the process further by hand-delivery or other specialized and individualized treatment of documents.

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## Guidelines for Lot Locations on MALPF Easement Properties

The Maryland Agricultural Land Preservation Foundation (MALPF) allows eligible landowners to apply for the release of an owner's lot, child's lot, or an unrestricted lot under certain conditions. Lot locations on properties with MALPF easements should be selected so that there is minimal impact on the current and future agriculture and forestry operations on the property.

When applying for the release of a lot from an easement property, the landowner should consider the likely impact that the dwelling to be built will have on agricultural and forestry operations. Because subdivided lots and their dwellings will almost inevitably someday be sold to an owner with no interest in the ongoing viability of the farming operation, any new residences and their access should be carefully located to minimize any current and future impact on the farming operation.

Preferably, the lot should be located along a public roadway and clustered with other dwellings (if they exist). Other considerations that should be weighed in locating any new lot on the farm is that it be along existing property lines, natural boundaries, on the edge of tillable land, and/or in the vicinity of the farmstead (the traditional cluster of barns, sheds, stables, and other farm structures, including the main farm house).

The preferred access to any proposed lot would be direct road frontage access from a public roadway. Less desirable, but possible alternative access if necessary would be to use an existing access, such as a farm lane or existing right-of-way. If other dwellings exist, access should be on a shared drive if feasible. Other considerations for access to the proposed lot include that it be along property boundary lines, natural boundaries, or along the edge of tillable land.

An undesirable location would be to ask to locate a proposed lot in the middle of a productive field with prime soils with access running across the entire property to its rear. Lot request locations based solely on aesthetics, view, or other non-farm criterion without consideration of the impact on the future farming operations are not likely to be approved. If the proposed location or access is not the Foundation's preferred location (clustered on a public roadway with direct access to that public road), the landowner should explain how more desirable alternatives were considered, and why they were not feasible.

When a lot is proposed to be located in an area that is not optimal, but is the only place an acceptable perc can be located, the application must be accompanied by a site plan showing failed locations from the Health Department, a licensed

sanitarian, or an engineer who is authorized to conduct perc tests or site preparation for perc tests.

If direct road frontage access to a public road is not possible, the county should encourage right-of-way access unless the county has regulations that require lots to have fee-simple access. (NOTE: If fee simple access is required by County regulation, it must be included in the allowable acreage of the lot.) If access is to be in fee, and not along a property line, the Foundation's Board of Trustees will approve the lot only with the condition that "the owner grants a right-of-way back to the farm over top of the access to the lot" and the Foundation will list a requirement on the approval letter to the landowner that the plat (survey or legal description) must include this right-of-way before it can be recorded.

A lot location approved by the Foundation occasionally does not meet perc requirements. In such a case, the landowner may request the approval of an alternative location. If the alternative location overlaps the originally approved lot location and does not have a greater impact on farming or forestry than the originally approved location, the alternative location may be reviewed and approved administratively by Foundation staff after it receives local agricultural land advisory board approval. Foundation staff reserves the right to refer any lot relocation request to the Board of Trustees for its review.

If multiple lot releases are requested or if a lot has already been located and approved on an easement property but not yet been developed, the locations of these lots relative to each other and the order in which they will be developed will be evaluated by the Foundation. The Foundation wishes to avoid situations where, because one or more approved lots is/are not subsequently developed, small non-farmable and non-developable pockets are created on the property.

The MALPF Board of Trustees will not attempt to change the location or review any request that changes the location of a lot after agenda material has been distributed. The application will be withdrawn to allow the local agricultural advisory board and Foundation staff to first review the new location. However, the Board can make suggestions on where the lot should be located and the new location must be resubmitted at a subsequent meeting. To avoid a resubmission, when initially applying for a lot, a property owner may submit two locations for approval by the local agricultural advisory board, MALPF staff, and the MALPF Board of Trustees, designating one as the primary preference. Upon receiving a successful perc, the landowner will notify MALPF staff of which location will be used.

The landowner and county program administrator are **strongly encouraged** to be present at the Foundation's Board meeting when the lot application is presented to answer any questions that may arise. Both landowners and program administrators must recognize that if they are not present, circumstances might arise that will require the request be tabled until they can be present.

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## Procedures for the Release of Pre-existing Dwellings

No pre-existing dwellings (residences existing on the property at the time of easement settlement that were not released by MALPF under a district agreement) may be released until they are formally approved by the Foundation. Requests for the release of a pre-existing dwelling will not be accepted if an easement application or easement settlement is pending. Please be aware that, in some situations, as much as three months may be required to release a pre-existing dwelling from the restrictions of the easement. The procedures to release pre-existing dwellings from the restrictions of the easement or district agreement are as follows.

**1. OWNER'S REQUEST**

You should submit a signed application to your local agricultural land preservation advisory board requesting the release of the pre-existing dwelling. If this request is based on your eligibility for a family lot or an unrestricted lot, that eligibility should be noted in your request. The county program administrator can assist you with your application. The application must include the following.

- If the request is for the release of a pre-existing dwelling based on family lot eligibility, a declaration that the lot and dwelling house are only for the personal use of the eligible landowner or landowner's child. You must provide the full name of the person for whom the dwelling is intended. If you are applying for release of a child's lot, you must include the birth certificate for the child named in the application.
- A description of the land to be released by both the dwelling and access to that dwelling, including a survey plat or tax map delineating the location and configuration of the lot associated with the dwelling. To avoid unnecessary expense, it is recommended to survey the requested lot lines only after approval in case the proposed configuration is not approved.
- A signed statement from the county planning and zoning department that verifies that the request meets local subdivision requirements.

**2. LOCAL RECOMMENDATION**

The local agricultural land preservation advisory board will evaluate your application and make a recommendation to the Foundation based on your eligibility for the release of the dwelling, the lot configuration and size, and the verification that the request meets local subdivision requirements. The advisory board will forward its recommendation in a letter to the Foundation including your application and the supporting documentation.

**3. FOUNDATION REVIEW**

Foundation staff will review the request for the release of the pre-existing dwelling based on eligibility requirements, the size and configuration of the proposed lot, and consistency with local requirements. Most requests for the release of a pre-existing dwelling are reviewed administratively by staff and are not reviewed by the Foundation's Board of Trustees.

Once approved, you will be requested to send a plat and a metes and bounds description of the lot in recordable size as prepared by a registered land surveyor at your expense. You will also be required to pay back the amount

you were paid by the Foundation for the easement on any land released greater than one acre. There is no interest or additional charge for the payback, and the amount will be stated in the approval letter.

Any requests for the release of more than one acre must be supported by a letter from the county health department if required for septic purposes and/or by a letter from the Department of Planning and Zoning or the program administrator if required to meet county regulations.

4. **THE PROCESS BY WHICH A PRE-EXISTING DWELLING IS RELEASED FROM EASEMENT RESTRICTIONS**

The release of a pre-existing dwelling from easement restrictions occurs after certification that the landowner or child of the landowner is eligible to have a lot released and the lot release is approved by Foundation staff (or, in certain circumstances, by the Foundation's Board of Trustees). The **Final Release and Agreement** will be issued by the Foundation and recorded at the landowner's expense when the Foundation has received a plat and a metes and bounds description of the lot in recordable size as prepared by a registered land surveyor at landowner expense and any required payback.

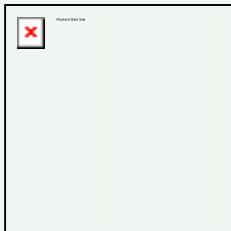
If the request for the release of a pre-existing dwelling is based on and restricted to family lot eligibility, the Final Release and Agreement document will have language included that legally restricts the transfer of the lot to another party for five years without permission of the Foundation's Board of Trustees.

All documents must be signed and notarized by all parties, be recorded in the land records of the county where the land is located, and will bind all future owners. The Foundation staff does everything possible to expedite the processing of legal documents and cannot accept requests to expedite the process further by hand-delivery or other specialized and individualized treatment of documents.

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

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