

Maryland Agricultural Land Preservation Program

THE AGRICULTURAL SUBDIVISION OF MALPF EASEMENT PROPERTIES

This Fact Sheet details the eligibility to request an agricultural subdivision of your MALPF easement land. It also details the procedure for the review and approval of an agricultural subdivision request by the Maryland Agricultural Land Preservation Foundation (MALPF). Regulations applicable to agricultural subdivisions can be found at COMAR 15.15.12.

Eligibility and Criteria for Agricultural Subdivision Approval

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, including the movement of interior boundary lines, conveying less than the whole farm subject to easement, or mortgaging only a part of the land which the easement encumbers, without express written approval of the Foundation.

Agricultural subdivision is not a right of the landowner and requests for approval for an agricultural subdivision shall be reviewed by the Maryland Agricultural Land Preservation Foundation Board of Trustees on a case-by-case basis to determine if:

1. There is a clear agricultural purpose to the subdivision. This means that the Foundation will not approve agricultural subdivision solely to create or enlarge a residential lot or to divide a farm among heirs.
2. The subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land. This means that the subdivision will not make the agricultural operations less cost efficient, and
3. The resulting divided parcels are able to sustain long-term agricultural production, independent of each other.

Subject to certain size criteria exceptions*, any parcels resulting from an agricultural subdivision approval:

- Must be at least 50 acres in size and continue independently to meet the minimum soils requirements for participation in the Foundation's Program.
- Must continue to qualify for agricultural use assessment.
- Must be substantial enough in size that they independently maintain viable agricultural utility.
- When possible, should have boundaries that follow a hedge row, stream, or other physical characteristic of the farm.

- Must be consistent with county planning and zoning regulations as evidenced by a county letter of approval and recommendation or statement of conformity, as well as a recommendation of the local agricultural land preservation advisory board.

Procedures for Agricultural Subdivision Approval

Contact your local program administrator if you wish to request an agricultural subdivision of your property. Your program administrator can assist you with the application process. The procedures for the review of requests to agriculturally subdivide an easement property are as follows:

1. OWNER'S REQUEST

Submit an application to your local program administrator requesting an agricultural subdivision. The local program administrator can assist you with the application. The complete formal application for agricultural subdivision is available on this website or from the local program administrator. This application must be signed by all titled landowners, and must include all of the attachments as specified on the application form.

2. LOCAL RECOMMENDATION

The county and the local agricultural preservation advisory board will evaluate your application and make a recommendation to the Foundation based on their judgment of the potential impact of the proposed agricultural subdivision on the continued agricultural use of the property explicitly addressing the board's conclusion on the likely impact on the property's continued agricultural use. The advisory board will forward its recommendation to approve or deny the request in a letter to the Foundation including your application and the supporting documentation. The County may not require fee simple road frontage dedication as a prerequisite to subdivision approval.

3. FOUNDATION APPROVAL

The Foundation will review agricultural subdivision requests on a case-by-case basis taking into account the information provided by you, the county's recommendation, the agricultural purpose of the subdivision, the impact of the proposed subdivision on agricultural use and long-term viability of farming operations. The Foundation may deny a request for an agricultural subdivision if an easement violation exists upon the land.

4. DOCUMENTATION OF APPROVAL

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 owners of all of the resulting divided parcels of an approved agricultural subdivision

must waive the right to request termination under Agriculture Article §2-514 Annotated Code of Maryland and the waiver must be specified in the corrective easements.

You may not proceed with subdivision plans pursuant to an approval until corrective easements have been recorded among the land records in the county in which the land is situated. If the Foundation approves your request, then you must submit 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. You must also remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction and furnish such other documentation as directed by the Foundation. These transactions are not considered a priority of the Foundation and shall be completed as staff resources permit.

* ***Special Exceptions to Size Criteria. Please refer to COMAR 15.15.12 for complete information.***

A. *The Foundation may permit resulting divided parcels of less than 50 acres of land if:*

(1) *One of the following exists for the resulting divided parcel comprised of less than 50 acres:*

(a) *The Foundation determines that physical limitations of the land, including but not limited to, bodies of water, public roads, and steep slopes create constraints making the 50 acre minimum impractical, and the resulting parcel of less than 50 acres continues to meet minimum soils requirements independently of the original farm; or*

(b) *The resulting divided parcel comprised of less than 50 acres;*

(i) is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation; (ii) the easement encumbering the adjoining land is amended 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

(iii) the resulting divided parcel and the adjoining land together meet minimum soils requirements; 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;

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

(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.*

A request for special exception based on conveyance to an adjoining easement parcel will require letters of support from organizations that can attest to the logistics of the request and the long-term productive capabilities of both the proposed agricultural subdivision and the remaining parcel (such as a county extension agent, the ASCS Office, Soil Conservation Service, Forest Service, etc.).

B. *If a tenant house was previously approved by the Foundation and it currently exists upon the land, an agricultural subdivision may be approved only if the resulting divided parcel on which the tenant house is situated is at least 100 acres and the corrective easement restricts the tenant house to the use of a tenant.*

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 an option contract or deed of easement please consult legal counsel.

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<http://www.malpf.info/facts/fact10.pdf>