

ELIMINATION OF DISTRICTS FROM THE MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM

**Pursuant to the Instructions of the General Assembly
Contained in Section 3 of HB 769 (2006)
and in Accordance with § 2-1246
of the State Government Article**

**Report to the Office of the Governor of Maryland
and the Maryland General Assembly**

Maryland Agricultural Land Preservation Foundation

January 31, 2007

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MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

Report to the General Assembly

January 31, 2007

Pursuant to the instructions of the General Assembly set forth in Section 3 of HB 769 (2006), and in accordance with § 2-1246 of the State Government Article, the Maryland Agricultural Land Preservation Foundation presents this report outlining the procedures and laws that the Foundation determines to be necessary in order to implement the elimination of agricultural districts from the Maryland Agricultural Land Preservation Program.

Section 3 of HB 769 directed the Foundation to submit this report to the Maryland General Assembly, on or before January 31, 2007, and to include the following elements in the report:

- a) Implementation timeline
- b) Statutory language for the repeal and reenactment of § § 2-509 and 2-510 of the Agriculture Article, including the removal of the requirement for districts from the easement application process to become effective July 1, 2007, and the elimination of districts from the program to become effective June 30, 2008
- c) Process for county and State approval of easement applications
- d) A provision for optional county districts
- e) A provision that requires participating counties to establish a right-to-farm ordinance
- f) A provision that prohibits properties from being developed or subdivided during the easement application process
- g) A provision that allows for the continuation of tax credits for existing districts

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Assembly**

- a) Implementation timeline..... Page 1
- b) Statutory language for the repeal and reenactment of § § 2-509 Page 2
and 2-510 of the Agriculture Article, including the removal of
the requirement for districts from the easement application process
to become effective July 1, 2007, and the elimination of
districts from the program to become effective June 30, 2008
- c) Process for county and State approval of easement applications..... Page 13
- d) A provision for optional county districts..... Page 14
- e) A provision that requires participating counties to establish Page 14
a right-to-farm ordinance
- f) A provision that prohibits properties from being developed or.....Page 14
subdivided during the easement application process
- g) A provision that allows for the continuation of tax credits for..... Page 15
existing districts

a) Implementation Timeline:

January 31, 2007	Report to be presented to the legislature, including statutory language necessary to implement the instructions contained in Section 3 of HB 769 (2006).
July 1, 2007	The statutory language as proposed in this report becomes law
July 1, 2007	Phase 1: The intent is to provide adequate time (one year) to allow counties to transition from State districts to county districts. The Foundation accepts easement applications on properties without districts. However, to assist counties that wish to implement a county district program, the Foundation will continue to accept applications for MALPF districts until June 30, 2008.
January 31, 2008	Pursuant to Section 3, HB 769 (2006), present to the legislature statutory language necessary to carryout Phase 2 of the removal of the district from the program, which requires further revision of §2-509 to remove references to districts.
July 1, 2008	Phase 2: Districts are no longer accepted by the Foundation. The Foundation will operate an easement program only.
June 30, 2012	Phase 3: All MALPF districts are terminated, except for (a) any district upon which an easement has been transferred to the Maryland Agricultural Preservation Foundation; and (b) any district established by a county and a landowner for the purpose of providing a property tax credit to a landowner.

b) Statutory language for the repeal and reenactment of § § 2-509 and 2-510 of the Agriculture Article, including the removal of the requirement for districts from the easement application process to become effective July 1, 2007, and the elimination of districts from the program to become effective June 30, 2008

Note: The proposed statutory language contained herein includes edits to correct spelling errors and an incorrect section reference in the existing statute.

A BILL ENTITLED

AN ACT concerning

Maryland Agricultural Land Preservation Foundation -
Agricultural Land Preservation Districts

FOR the purpose of removing the requirement for the establishment of certain districts on a certain date from the easement application process for the sale of an agricultural land preservation easement to the Maryland Agricultural Land Preservation Foundation; eliminating districts and district petitions on certain dates, subject to certain exceptions; correcting spelling errors and a section reference; and generally relating to the termination of districts and the sale of easements under the Maryland Agricultural Land Preservation Program.

BY repealing and reenacting, with amendments,
Article - Agriculture
Section 2-509 and 2-510(a)
Annotated Code of Maryland
(1999 Replacement Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Agriculture

2-509.

**THE EASEMENT APPLICATION PROCESS FOR PROPERTIES WITHOUT
ESTABLISHED DISTRICTS AND FOR PROPERTIES ENTERING A DISTRICT
IS AS FOLLOWS:**

(a) The Foundation shall adopt regulations and procedures for:

(1) Establishment and monitoring of agricultural districts **AND**

EASEMENTS;

(2) Evaluation of land to be included within agricultural districts **OR**

LAND TO BE SUBJECT TO AN EASEMENT; and

(3) Purchase of easements, including the purchase of easements

under an installment purchase agreement.

(b) Regulations and procedures adopted by the Foundation for the
establishment and monitoring of agricultural districts **AND FOR THE
PURCHASE OF EASEMENTS** shall provide that:

(1) One or more owners of land actively devoted to agricultural use may file a petition with the county governing body requesting the establishment of an agricultural district [composed of] **OR AN APPLICATION FOR THE PURCHASE OF AN EASEMENT BY THE FOUNDATION ON** the land owned by the petitioners. The petition shall include maps and descriptions of the current use of land in the proposed district **OR FOR THE PROPOSED EASEMENT**.

(2) Upon receipt of a petition to establish an agricultural district **OR APPLICATION TO PURCHASE AN EASEMENT**, the local governing body shall refer the petition **OR APPLICATION** and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body.

(i) Within 60 days of the referral of a petition **OR APPLICATION**, the agricultural preservation advisory board shall advise the county governing body as to whether or not the land in the proposed district **OR PROPOSED EASEMENT** meets the qualifications established by the Foundation under subsection **[(c)] (D)** of this section, and whether or not the advisory board

recommends establishment of the district **OR THE PURCHASE OF THE EASEMENT.**

(ii) Within 60 days of the referral of a petition **OR APPLICATION**, the county planning and zoning body shall advise the local governing body as to whether or not establishment of the district **OR THE PURCHASE OF THE EASEMENT** is compatible with existing and approved county plans and overall county policy, and whether or not the planning and zoning body recommends establishment of the district **OR THE PURCHASE OF THE EASEMENT.**

(3) 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 **OR FOR THE PROPOSED EASEMENT.**

Adequate notice of the hearing shall be given to all landowners in the proposed district **OR PROPOSED EASEMENT**, and to the Foundation.

(4) (i) Within 120 days after the receipt of the petition **OR APPLICATION**, the county governing body shall render a decision as to whether or not the petition **OR APPLICATION** shall be recommended to the Foundation

for approval.

(ii) If the county governing body decides to recommend approval of the petition **OR APPLICATION**, it shall so notify the Foundation and forward to the Foundation the petition **OR APPLICATION** and all accompanying materials, including the recommendations of the advisory board and county planning and zoning body.

(iii) The establishment of the district **OR THE PURCHASE OF THE EASEMENT** is approved by a majority of the Foundation board of trustees at-large, by the Secretary, and by the State Treasurer.

(5) The Foundation may approve a petition for the establishment of an agricultural district only if:

(i) The land within the proposed district meets the qualifications established under subsection **[(c)](D)** of this section;

(ii) The petition has been approved by the county governing body;
and

(iii) The 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.

(6) The Foundation shall render its decision on a petition to establish
[and] AN agricultural district within 60 days of the receipt of the petition, and
shall inform the county governing body and the petitioners of its decision.

(7) (i) If the Foundation approves the petition, the agricultural district
shall be established by an ordinance of the county governing body.

(ii) The establishment of the district shall not take effect until all
landowners in the proposed district have executed and recorded **[along with]**
AMONG THE land records an agreement with the Foundation stipulating that for
a specified period of time from the establishment of the agricultural district, the
[land-owner] LANDOWNER agrees to keep his land in agricultural use and has
the right to offer to sell an easement for development rights on his land to the
Foundation under the provisions of this subtitle.

(iii) In the ordinance that establishes an agricultural district:

1. The county governing body shall establish the length of time

required for a district agreement under subparagraph (ii) of this paragraph; and

2. The time period of the district agreement shall be from 3 to 10 years, both inclusive.

(iv) In the event of severe economic hardship the Foundation, with the concurrence of the county governing body, may release the landowner's property from the agricultural district. Any person aggrieved by a decision of the Foundation regarding a determination of severe economic hardship is entitled to judicial review.

(v) Nothing in this section shall preclude the landowner from selling his property.

(8) At any time after the period of time stipulated in the district agreement, a landowner may terminate his property as an agricultural district by notifying the Foundation one year in advance of his intention to do so.

(9) After the establishment of an agricultural district the county governing body or the Foundation may review the use of land within the district.

(10) The Foundation may approve alteration or abolition of a district

only if:

(i) The use of land within the district has so changed as to cause land within the district to fail to meet the qualifications established under subsection **[(c)] (D)** of this section;

(ii) The alteration or abolition of the district has been recommended by the county governing body; and

(iii) 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.

(c) Regulations and procedures adopted by the Foundation for the establishment and monitoring of agricultural districts **AND EASEMENTS** may not require, in Garrett County or Allegany County a natural gas rights owner or lessee to subordinate its interest to the Foundation's interest if the Foundation determines that exercise of natural gas rights will not interfere with an agricultural operation conducted on land in the agricultural district **OR LAND SUBJECT TO AN EASEMENT.**

(d) Regulations and criteria developed by the Foundation relating to land which may be included in an agricultural district **OR SUBJECT TO AN**

EASEMENT shall provide that:

(1) Subject to item (2) of this subsection, land shall meet productivity, acreage, and locational criteria determined by the Foundation to be necessary for the continuation of farming;

(2) As long as all other criteria are met, land that is at least 50 acres in size shall qualify for inclusion in an agricultural district **OR EASEMENT**;

(3) The Foundation shall attempt to preserve the minimum number of acres [in a given district] which may reasonably be expected to promote the continued availability of agricultural goods;

(4) Land within the boundaries of a 10-year old water and sewer service district may be included in an agricultural district **OR EASEMENT** only if that land is outstanding in productivity and is of significant size; and

(5) Land may be included in an agricultural district **OR EASEMENT** only if the county regulations governing the land permit the activities listed under

§2-513(a) of this subtitle.

[(e) The Foundation may not purchase an easement on land which is located outside an agricultural district established under this subtitle.]

2-510.

(a) An owner of agricultural land [located in an agricultural district established]

WHOSE EASEMENT HAS BEEN APPROVED BY THE COUNTY under

this subtitle may [offer by written application to] sell an easement to the

Foundation on the [entire] contiguous acreage of such agricultural land.

SECTION 2. AND BE IT FURTHER ENACTED, That effective July 1, 2007, districts are removed as a requirement for the easement application process to the Maryland Agricultural Land Preservation Foundation; and, on June 30, 2012, all Maryland Agricultural Land Preservation Foundation districts are terminated, and no landowner shall be bound to the terms of any Foundation district agreement, except as provided in Section 3 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That the following agricultural land preservation districts established pursuant to §2-509 of the Agricultural Article or by a county shall remain in force and are not terminated:

(a) any district upon which an easement has been transferred to the Maryland Agricultural Preservation Foundation; and

(b) any district established by a county and a landowner for the purpose of

providing a property tax credit to a landowner; and

SECTION 4. AND BE IT FURTHER ENACTED, That the Foundation may not accept a district petition for any purpose after June 30, 2008.

SECTION 5. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 2007.

c) Process for county and State approval of easement applications

Fiscal Year 2008 will be a transition period to provide time for the Foundation and the counties to adjust to the removal of the requirement for districts. Districts will not be required for easement application. However, the Foundation will continue to process districts for a period of one year to allow counties that intend to create district programs in their jurisdiction adequate time (one year) to make the adjustment. For counties that wish to continue with a district requirement (and will create a county district program in the future), the process for easement application for Fiscal Year 2008 easement applications essentially will not change. Those counties should follow the existing directions and timeline for the approval of easements set forth in §2-510(e)(1). Those counties that are discontinuing the district requirement should follow the process and instructions set forth in §2-509* which is outlined in the following procedure:

1. The county shall determine the deadline for receipt of applications in its jurisdiction to allow sufficient time for county review.
2. The application to sell an easement is due to the Foundation on July 1. However, the Foundation reserves the right to accept applications at a later date in consultation with the counties. (Note: The law (§ 2-510(b)) currently provides such discretion to the Foundation.) Only applications that meet the minimum qualifying soil, size, and location criteria shall be forwarded to the Foundation.
3. The local governing body shall refer the application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body. Within 60 days of the referral, the local advisory board shall advise the county governing authority whether or not it recommends the approval of the purchase of the easement. Within 60 days of the referral, the county planning and zoning body shall advise the local governing body as to whether or not the purchase of the easement is compatible with existing and approved county plans and overall county policy, and whether or not the planning and zoning body recommends the purchase of the easement. The county Program Administrator shall notify the Foundation of the recommendations of the advisory board and the planning and zoning body.
4. If either the agricultural preservation advisory board or the planning and zoning body recommend approval, the county governing body shall hold a public hearing on the proposed easement. Adequate notice of the hearing shall be given to all landowners in the land proposed for sale of an easement, and to the Foundation.
5. Within 120 days after the receipt of the application, the county governing body shall render a decision as to whether or not the application shall be recommended to the Foundation for approval and shall notify the Foundation of its decision.

6. The procedure for ranking of properties will not change. The county shall rank its properties according to the ranking system approved by the Foundation. The county shall provide its ranking of properties to the Foundation on or before January 31 of the fiscal year.
7. The procedure for matching funds commitment will not change. The county shall provide to the Foundation the matching funds commitment amount on or before January 31 of the fiscal year.
8. The board of trustees of the Foundation shall not approve any application to sell which has not been approved by the governing body of the county containing the subject land.
9. 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 containing the specific terms of the purchase shall be tendered to the landowner.

* During the transition period (Fiscal Year 2008 applications only), counties eliminating the district requirement may, at their discretion, follow the easement approval process set forth in §2-510(e)(1) on those properties with existing MALPF districts. However, for properties without established districts, the easement approval process for §2-509 must be followed. For Fiscal Year 2009 and beyond, all properties entering the program will follow the process set forth in §2-509.

d) Provision for optional county districts

Under State law, a county may adopt ordinances or seek legislation to establish districts in its jurisdiction.

e) Provision that requires participating counties to establish a right-to-farm ordinance

§5-403 of the Agricultural Article provides protection to farmers in Maryland against nuisance suits.

f) Provision that prohibits properties from being developed or subdivided during the easement application process

The easement application form shall include a statement, to be signed by the landowner, that the landowner acknowledges that the land on which he or she is applying to sell an easement shall not be subdivided or encumbered by a restriction during the application process without first notifying the Foundation. Failure to comply with this restriction

shall result in withdrawal of the application.

g) Provision that allows for the continuation of tax credits for existing districts

Section 3 of the statutory language contained in this report contains a provision that any MALPF district established by a county and a landowner for the purpose of providing a property tax credit to a landowner shall not be terminated.