

Fact Sheets: About Maryland's Agricultural Land Preservation Program

The Maryland Agricultural Land Preservation Program, in existence since 1977, is one of the most successful programs of its kind in the country. Its primary purpose is to preserve sufficient agricultural land to maintain a viable local base of food and fiber production for the present and future citizens of Maryland. The Program consists of two basic steps: the establishment of agricultural preservation districts, and the purchase of perpetual agricultural conservation easements. For a full view of the Program, please read the fact sheets described below.

[Fact Sheet 1](#) – **“Agricultural Preservation Districts”** – describes the eligibility criteria and procedures for the establishment of agricultural preservation districts and how an agricultural preservation district benefits a farmer.

[Fact Sheet 2](#) – **“The Easement Acquisition Program”** – describes the eligibility criteria for easement application, the conditions of an easement, the stages of the easement acquisition program, and how to determine the "asking price" for an easement application.

[Fact Sheet 3](#) – **“Settlement of an Agricultural Conservation Easement”** – describes the process of settlement of an agricultural conservation easement and measures to take to expedite that process.

[Fact Sheet 4](#) – **“Development Options Retained in Districts and Easement Properties”** – details the eligibility landowners retain to request that lots for themselves and their children be released from the district or easement. It also details the eligibility and procedure for tenant house approval.

[Fact Sheet 5](#) – **“Small Properties in the Agricultural Preservation Program”** – describes how the program works and its limitations for owners of small properties interested in participating in the program.

[Fact Sheet 6](#) – **“Subsequent Owners of Districts or Easement Properties”** – describes the benefits and restrictions of the Program to the current owner of property on which the previous owner had established an agricultural preservation district or sold a perpetual agricultural conservation easement.

Fact Sheet #1: Agricultural Preservation Districts

This Fact Sheet describes the eligibility criteria and procedures for the establishment of agricultural preservation districts and how an agricultural preservation district benefits a farmer.

Eligibility Criteria for District Establishment

- SIZE -

An effective way to preserve agricultural land is to amass contiguous acreage. The larger the mass of agricultural land, the greater the opportunity to:

- preserve sufficient acreage to provide significant productivity,
- retain dealers of agricultural equipment and supplies nearby, and
- maintain a sense of a rural agricultural community.

The minimum district size is 50 contiguous acres. If you do not own 50 acres, neighboring landowners can join together as long as there is a collective total of 50 contiguous acres, subject to Board approval. Landowners of less than 50 acres should review [Fact Sheet 5](#), "Small Properties in the Agricultural Preservation Program," or confer with the Cecil County program administrator.

If your property is contiguous to an existing district, you may petition to establish a district regardless of the acreage.

- PRODUCTIVITY -

A district is formed on land that is either currently being used for producing food or fiber or has the capability to do so. Woodland management and harvesting operations are eligible to join this program. The productivity of the soil as measured by the USDA's Soil Conservation Service Land Classification System is a major criterion. For the property to qualify to participate in the Program requires:

- at least 50 per cent of the land shall classify as Class I, II or III soils; or,
- if the land is wooded, 50 per cent of the land is classified as Woodland Group 1 or 2 soils; or,
- if the reason the land cannot meet the above conditions is because of flood-plain or wetland soils, those areas could be excluded as a percentage of land; or,
- if there is an insufficient percentage of Class I, II or III soils alone and there is an insufficient percentage of Woodland Groups 1 and 2 soils alone, the land would qualify if the combination of the two exceeded 60 per cent; or,
- land with lower soil capabilities may qualify to be in a district if 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. Visit your local program administrator for advice on whether you might qualify for such an exception.

- LOCATION -

Land that lies within the boundaries of a 10-year water and sewer service area plan is generally not eligible unless it has extraordinary productive capability and is of significant size.

- COMMITMENT -

You must agree to the stipulations listed in the district agreement.

- You agree to keep the land in agriculture for at least five years. The agreement forbids the subdivision and development of the land for residential, commercial, or industrial purposes during this period.
- You agree to subdivide for agricultural purposes only with prior approval by the Foundation, prior to applying for County approval.

Although the agreement requires a five-year minimum commitment, you may stay in district status indefinitely without needing to renew the agreement.

Benefits from District Establishment

To establish an agricultural preservation district, you must sign an agreement which is notarized and recorded in the land records of Cecil County. The agreement, which is in effect for at least five years even if the property is sold or transferred during that period, provides the following benefits:

- The security of knowing that the land and any nearby districts are protected from development. An official acknowledgment from the Foundation and the county that farming is the preferred use of the land. Although the outcome is not guaranteed, it is certainly useful evidence if you were ever involved in defending yourself against a nuisance complaint filed by non-farming neighbors in court.
- The retention of eligibility to have up to three one-acre lots for yourself as landowner and your children released from the district agreement, or a single unrestricted lot that could be released from the district agreement. (Refer to [Fact Sheet 4](#), "Development Options Retained in District and Easement Properties," for the conditions under which this eligibility can be exercised.)
- The right to sell a perpetual agricultural conservation easement to the Foundation. Applicants bid on the difference in value between the fair market value (that which a developer might pay) and the agricultural value (that which a farmer might pay). (Refer to [Fact Sheet 2](#), "The Easement Acquisition Program.")
- As a recorded agricultural preservation district, Cecil County will allow for a 50% tax credit of the land portion of the yearly property tax bill.

Procedures for District Establishment

Cecil County has an Agricultural Preservation Advisory Board of five members and a local ordinance that creates the local program. It is your responsibility to initiate the evaluation and approval process required by law. This process may involve several months and includes the following steps.

- **Step One.** You submit an application to establish an agricultural preservation district. You should first discuss the program with the local administrator of the agricultural preservation program who will assist you in completing the forms. The required State forms are the Property Description and the District Agreement. The correct property deed will also be submitted. Soils analysis and mapping are the responsibility of the local program administrator. The petition and documentation will be presented to both the Agricultural Preservation Advisory Board and the Cecil County Planning Commission.
- **Step Two.** The Agricultural Preservation Advisory Board and the Cecil County Planning Commission inform the County Commissioners of their recommendations. If either recommends approval, a public hearing shall be held. If neither recommends approval, the county governing body shall deny the petition.
- **Step Three.** The County Commissioners shall render a decision on whether the petition should be recommended to the Maryland Agricultural Land Preservation Foundation for approval.
- **Step Four.** Within 60 days of the receipt of a district petition approved by the county, the Foundation shall render a decision on approval or denial of the petition. If approved, Foundation representatives will sign the district agreement and have it recorded in the land records of the county. The date of recordation of the agreement is the official establishment of the agricultural preservation district.

What Size Should Your District Be?

By statute, an easement must apply to an entire district. The Foundation's intent is to purchase an easement on an entire farm and to keep it together as a single farming unit. Because the total purchase price of an easement on farms of significant acreage may exceed available funding in a county, the Foundation may allow you to create more than one district for which easement applications could be made separately. The Foundation does not allow the creation of multiple districts from a single parcel to create additional development rights.

In certain cases, you may wish to include several smaller parcels under a single district agreement to consolidate them into a more viable long-term farming operation. The resulting district, once included under a single easement, will no longer be subdividable into its original parts except under the policy guidelines of the Foundation and by its approval. A central objective of the program is to keep viable farming operations intact.

Fact Sheet #2: The Easement Acquisition Program

This Fact Sheet describes the eligibility criteria for easement application, the conditions of an easement, the stages of the easement acquisition program, and how to determine your "asking price."

Eligibility Criteria for Easement Application

1. Your property must be in an agricultural preservation district. (See [Fact Sheet 1](#), "Agricultural Preservation Districts").
2. You must have a soil conservation plan for the property which:
 - o has been approved by the local soil conservation district;
 - o has been made or revised within the last ten years;
 - o lists all soil conservation and water quality practices needed to correct existing problems on the property; and,
 - o contains a schedule of implementation which indicates when the soil conservation and water quality practices will be installed.
3. If a minimum of 25 acres of your property is wooded, you must implement a forest management plan demonstrating proper forest management techniques on the wooded acreage.

Conditions of an Easement

An easement is a legal agreement between a landowner and another entity, such as the State or a public utility that establishes a material interest in a property. That interest can either establish a specific limited use right, such as the right to place electrical transmission lines across the property, or restrict the future uses of the property by the landowner, such as limiting development on the property.

When the State of Maryland purchases an agricultural conservation easement on your property, you are, in essence, selling your development rights. You voluntarily sell your right in perpetuity to develop your farm for residential, commercial, or industrial use. This means that, for whatever compensation mutually agreed upon by you and the Maryland Agricultural Land Preservation Foundation, you will preserve the land for agricultural use without exception now and in the future.

The deed of easement you will sign if the Foundation purchases your development rights contains the following restrictions.

- The land may not be developed or subdivided for industrial, commercial or residential use except for certain personal eligibility options you retain. (See [Fact Sheet 4](#), "Development Options Retained in District and Easement Properties.")
- Signs or billboards may not be displayed on the property except for signs smaller than four feet square which may only be erected for the following purposes:
 - o to state the name of the property and the name and address of the occupant;

- to advertise a home based occupation consistent with the purposes of the easement; or,
 - to advertise the property's sale or rental.
- Trash or rubbish may not be dumped on the property. Any material which is for regular agricultural use may be dumped.
- Soil and water conservation practices contained within a soil conservation plan approved by the local soil conservation district must be implemented. The practices shall be installed on the land according to the schedule of implementation within the plan. The plan must be completely implemented within ten years of the easement settlement date.
- Representatives of the Foundation shall be permitted to periodically inspect the property for compliance with the conditions of the easement. The representatives shall have no right to inspect the interior of any structures.
- The easement does **not** grant the public any right to access or use of the land.

Stages of the Program

You should be aware that the various stages of the program may cumulatively take as long as 12-18 months from the time you submit your easement sale application until you receive a check from the Foundation to purchase your easement, if an offer is made on the preservation district.

STAGE ONE: SUBMITTAL OF APPLICATION TO SELL EASEMENT

The deadline to submit your application is July 1 of every year. Applications should be submitted to County's program administrator. Most of the information requested on the application is to assist the appraisers and to secure signatures of any third part interests in the property. The most important part of the application to you may be the establishment of your Asking Price (see below). Application forms with instructions are available elsewhere at this website, from your local program administrator, or from the Foundation.

STAGE TWO: COUNTY APPROVAL OF APPLICATIONS

The Foundation may set a limit each fiscal year, as to the number of applications that may be submitted. The County will have 60 days to review the applications and approve up to the maximum number the Foundation will consider for that fiscal year. The Foundation may only offer to purchase easements from applicants who have been approved by the county.

STAGE THREE: APPRAISALS

Two independent fee appraisers are selected by bid to establish a Fair Market Value (that which a developer might pay) for your property. Appraisal reviewers at the Maryland Department of General Services will select one of the two appraisals (or three if you submit an appraisal) which reflects the most accurate and documented

work. Appraisals calculate Fair Market Values only for the land, and not the improvements on the property.

STAGE FOUR: ESTABLISHING AN AGRICULTURAL AND AN EASEMENT VALUE

The Foundation calculates an Agricultural Value for the property, which is its agricultural production value. The Agricultural Value is determined by a formula that calculates land rent based on the soil productivity OR the five-year average cash rent in the County, whichever is lower. The Easement Value of the property is then calculated by subtracting its Agricultural Value from the Fair Market Value. The maximum price that the Foundation can pay for an easement is either the landowner's Asking Price or the Easement Value, whichever is lower.

STAGE FIVE: ROUND ONE OFFERS

The County ranks its applicants by its own ranking system approved under State ranking guidelines. You should consult your county's program administrator for information on the criteria by which applicants are ranked in your county.

Round One offers are made county-by-county. Offers are made to applicants in the order they are ranked until funds allocated to that county are fully committed.

STAGE SIX: ROUND TWO OFFERS

If you did not receive a Round One offer, your property will be ranked again on a statewide basis using the State discounting formula: a ratio of the applicant's Asking Price divided by the Easement Value. Using any remaining funds, offers are made down the ranked list of applicants until State funds are fully committed. Anyone who does not get an offer may reapply by submitting a new application by July 1.

STAGE SEVEN: SETTLEMENT

You must indicate in writing within 30 days of receiving the offer whether you will accept or reject it. The offer letter includes an option contract in which you will specify how you wish to be paid: either the total in a lump sum or installment payments spread over as many as ten years. **The offer, once accepted, must be approved by the Board of Public Works.** A title search is conducted and, if the title to the property is clear and acreage can be verified, settlement is scheduled. For properties with clear title and verifiable acreage, the landowner will receive payment for the easement an average of six to nine months after accepting an offer. The deed of easement signed at settlement is recorded in the land records of your county. (See [Fact Sheet 3](#), "Settlement of an Agricultural Conservation Easement.")

Determining Your Asking Price

The Agricultural Land Preservation Program is a highly competitive program that, in recent years, has only made offers to about one-third of its applicants. Your Asking Price may be of critical importance to whether you are made an offer or not. Your Asking Price is the price at which you are willing to sell the development rights on your property to the Foundation.

You should think of your Asking Price as a bid that puts your application in competition with other applicants. Setting too high of an Asking Price may result in not receiving an offer. Setting too low of an Asking Price may result in an offer that you are unwilling to accept.

Your first step in deciding your asking price should be to consult with the County program administrator about the County's ranking system and the recent experiences its applicants have had in competing for offers. If you are still unsure of what your Asking Price should be, consider following these steps in calculating an acceptable competitive Asking Price.

1. DETERMINE THE EASEMENT VALUE

The Easement Value is the Fair Market Value (that which a developer might pay) **minus** the Agricultural Value (that which a farmer might pay). You can estimate the Fair Market Value of your property based on recent comparable sales in your area and/or the appraised values of recent applicants to the program in your county. You could also have your property appraised at your expense. If you decide to have your property appraised, the County program administrator or the Foundation can provide you with a list of appraisers qualified to perform appraisals for the State and the guidelines necessary to meet State requirements for the program. If you have obtained your own appraisal, you may submit a copy with the application and it will be considered with the two appraisals ordered by the State.

The Foundation determines Agricultural Value by a formula that calculates land rent based on the soil productivity OR the five-year average cash rent in the County, whichever is lower. While this value varies by property and year, you can obtain an estimate from your local program administrator. Once you have both an estimated Fair Market Value and Agricultural Value, you can estimate the Easement Value of your property.

Example:

\$4,000 per acre - estimated Fair Market Value
\$1,200 per acre - minus estimated Ag. Value
\$2,800 per acre - equals estimated Easement Value

2. APPLY A COMPETITIVE DISCOUNT

By your own sense of how much competition you face from other applicants, you may wish to discount a percentage of the Easement Value you have estimated. If, for example, you feel that a 20 per cent discount is sufficient to guarantee an offer that will be satisfactory to you, you would multiply the estimated Easement Value by 0.8. Using the figures above, your Asking Price would be:

\$2,800 per acre - estimated Easement Value
0000.8 - multiplied by 20% discount factor
\$2,240 per acre - equals: Asking Price

3. CONSIDER TAX INCENTIVES

You may consider adjusting your Asking Price based on the impact tax incentives can have on your sale of the easement. Selling an easement for less than the Easement Value may qualify you for certain tax benefits. Discounting from the Foundation-determined Easement Value does **not** establish your eligibility for tax benefits because the Foundation's calculation of the Easement Value does not meet IRS standards. The IRS requires that you acquire an independent appraisal of the easement value meeting its standards. You may wish to consult a tax professional to understand IRS requirements to establish your eligibility for these benefits and to determine the likely effect of Maryland's state income tax credit, the Federal income tax deduction, state and local property tax credits, and other tax benefits. Foundation staff and local staff cannot provide tax advice to Program participants.

Rejecting an Offer

If you are made an offer for the full amount of your Asking Price or the Easement Value (whichever is lower) and you reject the offer, you may not reapply until two years after the date of your original application. For example, if you reject a full offer in the Fiscal Year 2008 Easement Program, you could reapply in the Fiscal Year 2010 Easement Program (which begins July 1, 2009).

You may be made an "insufficient funds offer." This occurs when the balance of available funds is not enough to make a full offer. If you accept an insufficient funds offer, you must accept it on the terms as stated (in other words, the offer cannot be increased). If you reject it, you would be eligible to compete if any additional offers were to be made; however, there is no guarantee of another offer. If you do not receive a full offer by the end of the program cycle, you may reapply for the next available program cycle.

Fact Sheet #3: Settlement of an Agricultural Conservation Easement

This Fact Sheet describes the process of settlement of an agricultural conservation easement and measures you can take to expedite that process.

The Settlement Process

The settlement process begins after the Maryland Agricultural Land Preservation Foundation makes an offer to an applicant for the purchase of an agricultural conservation easement. If the applicant accepts the offer, several steps are required before settlement occurs and payment can be made. The process may take between three to nine months, provided title is clear and the acreage can be verified.

1. The Foundation makes an offer to the landowner to purchase the easement.
2. The landowner accepts or rejects the offer within 30 days.
3. The landowner submits the signed option contract.
4. The Secretary of Agriculture signs the option contract, and the Foundation submits it to the State Department of General Services to be scheduled for Board of Public Works review.
5. The Board of Public Works reviews the option contract and approves (or disapproves) it. If disapproved, the offer is rescinded and the process ends. If approved, the contract is returned to the Department of General Services.
6. The Department of General Services notifies a title company under contract to conduct a title search on the property.
7. The Assistant Attorney General assigned to the case reviews the title search report to determine if the title is clear and evaluates the description of the property for accuracy and to verify acreage amount. The Foundation, in turn, notifies the landowner of any actions necessary to clear the title or verify the property description and acreage.
8. When the title is clear and the acreage is verified, settlement papers are delivered to the title company, the settlement check is ordered, and the landowner is notified by mail of the readiness to settle.
9. A settlement date is scheduled by the title company and the landowner. The settlement check is sent to the title company.
10. Settlement takes place. If the settlement involves installment payments, the installment funds are invested by the State at the interest rate in effect on the day of deposit. Each installment includes interest minus one-quarter of one percent of the interest earned.

The Option Contract

The complete option contract, which is sent with the offer letter, is composed of two parts: the option contract to be signed and returned and the sample deed of easement. You must fill out, sign, witness, and return the option contract to the Foundation before any action can begin on settlement. The option contract describes the acreage to be encumbered by the easement and the per acre price to be paid. The sample deed of easement provides the text of the document which will be executed at settlement and recorded in the land records of your county. Please review it carefully as it lists the conditions which you will be responsible to uphold and maintain as long as you own the land. If you sell the land, any subsequent landowner must also comply with the stipulations in this deed of easement.

Actions You Can Take to Facilitate Your Settlement

- PROPERTY DESCRIPTION -

Unfortunately, title deed descriptions, when plotted and computed, are often inconclusive and may vary significantly from the acreage stated in the deed or the State's Property Tax records. The Foundation must also be sure that the acreage covered by the easement is the same as your district agreement. If there is a discrepancy, you may be required to have a survey conducted by a professional land surveyor at your expense.

Out-conveyances pose additional problems. Your deed may be very old, and several small parcels might have been conveyed to others before the district agreement and deed of easement were finalized. If you were unaware of some of these out-conveyances, you may discover that you have less acreage than you thought.

In some cases, a title search or survey reveals more or less acreage than you thought you owned. In these cases, if the verified acreage difference is within two percent of the acreage in the district, payment is based on the original acres less one acre surrounding each pre-existing dwelling. If the verified acreage is less than two percent of the original district acreage, the offer is adjusted accordingly. If the verified acreage is greater than two percent of the original district acreage, the offer cannot be adjusted upward to cover the additional acreage. In this situation, the landowner must choose to accept the original offer amount or reject that offer and reapply to sell the easement at a later date based on a verified higher acreage total.

Some of your development rights may have already been removed. For example, a power transmission line which runs across your property may have involved an easement in which you or a previous owner was paid not to develop under the lines and towers. In such a case, the acreage on which the Foundation pays will be reduced by the acreage on which the development rights have already been purchased by the power company. Forest conservation or open space easements can also reduce the acreage on which the Foundation is able to purchase easements.

An incorrect deed reference in the district agreement or easement application may result in the search of the title to the wrong property. When this happens, another title search must be ordered, causing additional expense and a delay in settlement.

Prior to submitting a district petition or an application to sell an easement, verify that deed references shown on your district agreement and easement application truly reflect the proper easement acreage after out-conveyances or sale of development rights to other parties. This will greatly assist the settlement process.

After you have accepted the Foundation's offer, you may also wish to submit a survey of the property with a written metes and bounds description if you are aware that the legal description in your title deed is incorrect or insufficient, rather than waiting for notification from the Foundation. The Foundation cannot detect faulty deed references or acreage adjustments until the title search has been performed and is reviewed by the Attorney. Please be aware that the title search could hold up settlement for a significant period of time, and, if the acreage cannot be verified, you will be requested to submit a survey of the property which may further delay the process.

- INSTALLMENT PAYMENTS -

You must choose in your option contract how you wish to be paid: either the entire amount at closing, or annual installment payments over two to 10 years. You may wish to consult with a tax professional before you fill out the installment schedule. Settlement usually takes place within the same calendar year unless title problems delay the process. The settlement check is based on the amount you specified in the option contract unless acreage adjustments are made.

If you decide to make a change in your installment payment schedule, the settlement process stops until you initial and return a revised schedule. If a change were to take place after the settlement check is ordered, the check must be stopped and a new check ordered for the revised amount which will take another month. **To avoid delays in settlement, please review your payment needs and tax consequences at your earliest convenience.** If, after you have sent in the option contract, you discover the need to revise the payment schedule, notify the Foundation immediately.

Please note that, due to constraints currently posed by the use of State bond and Federal funds, the choice to use the installment payments option may be limited for certain offers made by the Foundation. If the installment payments option is available to you in your option contract, you may not be able to make a change in your choice of payment once you have returned your option contract.

- MORTGAGES, LIENS AND LEASES -

If your land is encumbered by mortgages, financing statements on fixtures, liens by legal judgments against you, equity lines of credit, or third party interests in gas, coal or other mineral rights, all mortgage, lien or lease holders must release or subordinate their interests to the Foundation. Settlement cannot take place until all affected parties agree to sign the deed of easement. Signatures of such parties are also required on the easement application and the option contract.

The Foundation is spending public funds to insure that use of the land is restricted to agriculture. If a party with a lien on the property is not made part of the agreement and there is a foreclosure, that party could undo the deed of easement at the expense of the State.

You can assist the subordination process by making sure that you have contacted all such parties and explained the conditions of the program. If they have any questions, they can access the Foundation's website or contact the Foundation or the local program administrator directly. You are responsible for working out the terms or conditions of releases or subordination with holders of mortgages, liens or leases. Most mortgagees will subordinate without compensation, but some will require a full release or a partial payback before they will sign the subordination.

Third party interests can delay the settlement process. They usually prefer to review the deed of easement with their attorneys prior to signing and frequently do not wish to appear in person at settlement. In these cases, their signatures are acquired by mail prior to settlement.

- MISCELLANEOUS -

Some properties have unique title issues. Your own property may be held by Trustees or in the name of an entity such as a corporation, partnership or limited liability company. You can help expedite your settlement by providing information on any unique issue of which you may be aware. The following are examples.

- If a Trust holds title to the property, provide copies of the governing trust instrument and all amendments thereto, as well as names and addresses of all trustees and beneficiaries.
- If an owner of record of the property is no longer living, provide copies of the death certificate.
- If the land is owned by a family corporation, partnership, limited liability company or other such entity, provide the names and relationships of all the principals in that entity. For a corporation, provide shareholders; for a partnership, provide partners; and for a limited liability company, provide members. Further, provide organizational and authorization documents showing that the transaction is authorized by the entity and naming a person to act on behalf of the entity. Provide a Certificate of Good Standing for the entity.

Fact Sheet #4: Development Options Retained in Districts and Easement Properties

This Fact Sheet details the eligibility you retain to request that lots for yourself and your children be released from the district or easement. It also details the procedure for tenant house approval, whether you are in an agricultural land preservation district or you have sold a permanent agricultural conservation easement to the Maryland Agricultural Land Preservation Foundation.

Eligibility for Release of Lots

Whether you placed your property in an agricultural preservation district or you have sold an agricultural conservation easement to the Foundation, you remain eligible for the following (subject to applicable laws).

If your district agreement was recorded in the Cecil County land records before October 1, 2003, and you have not sold an easement on your property, *or* if you sold an easement whose option contract was approved by the Maryland Board of Public Works before October 1, 2003:

- You, as the original owner, are eligible to apply for release of a one-acre or smaller lot for your personal residence. Irrespective of the form of ownership (multiple individuals, family entity, or non-family entity), only one owner's lot can be released, no matter how many district or easement properties you own.
- You, as the original owner, are eligible for release of a one-acre or smaller lot for residences for each of your children, providing that you have enough land for one lot per 20 acres up to a maximum of 10 lots per property. Non-family entities are not eligible for children's lots.
- Eligibility to exclude owner's and children's lot is extinguished when the property transfers to a subsequent owner, whether or not all of the lots have been developed.
- You or any subsequent owner may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of easement purchase.

If your district agreement was recorded in the county land records after October 1, 2003, *or* if you sold an easement whose option contract was approved by the Maryland Board of Public Works after October 1, 2003:

- You, as the original owner, must choose at the time of easement application *or*, if you are still in a district and have not applied to sell your easement, at the time you wish to exclude a lot from the district agreement, whether you wish to retain eligibility to develop up to three family lots *or* one unrestricted lot on your property.

- If you have chosen the family lot option, you, as the original owner, are eligible to apply for release of a one-acre or smaller lot for your personal residence, and/or each of your children are eligible for the release of a one-acre or smaller lot for their personal use, providing that you have enough land for the first lot for the first full 20 acres, the second lot for 70-120 acres, up to a maximum of three family lots if the property is over 120 acres.
- If you have chosen the family lot option, you, as the original owner, may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of district establishment (if the property remains in district status) or easement purchase. The exclusion of a lot around a pre-existing dwelling can only be for the personal use of a family member qualifying for a family lot and will use up eligibility for a family lot from the total possible on the property.
- Irrespective of the form of ownership (multiple individuals, family entity, or non-family entity), only one owner's lot can be released, no matter how many district or easement properties you own. Similarly, no single child can receive more than one child's lot, no matter how many district or easement properties you own. Non-family entities are not eligible for children's lots.
- If you have chosen the unrestricted lot option, you or any subsequent owner are eligible to exclude a one-acre or smaller lot to develop a single dwelling. There are no restrictions on who can receive this dwelling. Once this lot is developed, no more lots can be excluded from the district or easement. A property must have a full 20 acres for this lot to be excluded.
- If you have chosen the unrestricted lot option, you or any subsequent owner may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of district establishment (if the property remains in district status) or easement purchase. If you exclude the acreage around a pre-existing dwelling, you may transfer this dwelling to any person. An exclusion for a pre-existing dwelling will extinguish eligibility for an unrestricted lot on the property.
- If you are concerned about the future status of pre-existing dwellings on your property, you should consult with the Cecil County program administrator about excluding such dwellings before district establishment.

Please note that only the original owner who signed the district agreement or sold the agricultural conservation easement to the Foundation is eligible for release of an owner's lot, child's lot, or family lots. Subsequent owners of district and easement property are not eligible for release of such lots whether the original owner had lots released or not. An unrestricted lot not developed by the original owner can still be developed by a subsequent owner. Any lots released from the district agreement or easement cannot be further subdivided.

Lots released while a property is in district status (prior to easement sale) will reduce the total number of lots available for the owner who sells the easement. Any lots created may be up to two acres in size if required by the local Health Department for septic reserve or by regulations adopted by the county. Release of an owner's lot and/or children's lots from the easement or district does not constitute a subdivision of the lots from the balance of the property. They may not be sold or otherwise

conveyed separately from the whole property without appropriate subdivision approval from the local governing authority

Procedures for the Release of Lots

Regardless of the status of the property (district or easement), 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 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 an owner's, child's, or unrestricted lot. 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 use of the landowner or the 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.
- A signed statement from the county planning and zoning department that verifies that the request meets local subdivision requirements.

The Cecil County program administrator can assist you. To avoid unnecessary expense, you should wait until the Foundation approves the lot location before you have the lot surveyed.

2. LOCAL RECOMMENDATION

The Cecil County Agricultural 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. 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. 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. If an easement has been sold, 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. If the lot is on district property, not encumbered by an easement, a survey is not required, but approval will be conditional upon your acknowledgment that the lot will be deducted from your lot eligibility should you sell an easement in the future.

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.

- a. 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.
- b. 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.

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 Chairman of the Foundation Board of Trustees, the Secretary of Agriculture, and the State Treasurer must sign the releases before they are sent for recordation in the land records. 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.

5. **THE PROCESS BY WHICH A BUILDING LOT IS RELEASED FROM THE RESTRICTIONS OF A FIVE-YEAR DISTRICT AGREEMENT**

If the released lot is only on a district property, you will receive a confirmation letter from the Foundation. The approval letter will allow you to apply for a building permit. If the owner of a district property with a released lot sells an agricultural conservation easement to the Foundation, the lot will

have to be surveyed and excluded from the deed of easement prior to settlement.

Estate Planning

With the exception of those eligible for and choosing the unrestricted lot option, the law specifically allows only the original landowner who sold the easement to create lots for his or her children. If the owner should die before formally requesting any lots for eligible children, the Foundation may deny any requests to release lots for these children. As a form of insurance against such an occurrence, the landowner may formally document the intention to create a child's lot even though this transaction may not be completed until years later. Following the procedure outlined above to the point of Foundation approval, the landowner may formally state the intent to create a child's lot for specifically named eligible children in a letter to the Foundation that is placed in the property file, or the landowner may include language in his or her last will and testament which clearly indicates the intention to create lots for the named children.

By presenting the Foundation's letter of approval, a letter from the Foundation acknowledging receipt of this letter of intent, or the will, a landowner's children may complete the lot release transaction after the landowner's death. However, even if a landowner has formally documented the intention to create lots, any uncompleted lot release transactions are null and void once the property is sold or the ownership is transferred.

Procedures for Tenant House Approval

Upon approval by the Foundation, you or any subsequent owner of the property may construct housing for tenants fully engaged in operation of the farm, in addition to any tenant houses that existed at district establishment. Tenant housing may not exceed one house per full 100 acres. The land on which a tenant house is constructed may not be subdivided or conveyed to any person, nor may the tenant house be conveyed separately from the land. The land under and surrounding the tenant house cannot be released from the easement. The procedures for approval to construct a tenant house are as follows:

1. OWNER'S REQUEST

Submit a signed application to your local agricultural land preservation advisory board requesting a tenant house. The local program administrator can assist you. The application must include the following.

- A signed declaration that the tenant house is necessary for the operation of the farm and is only for the use of tenants fully engaged in operation of the farm.
- Evidence that demonstrates the need for a full-time tenant for the farming operation.
- A description of the land to be disturbed by both the tenant house and access to that house to help determine the impact that dwelling will have on the farming operation.

- A survey plat or tax map on which the location of the proposed tenant house is noted as it relates to access, other dwellings on the property, and nearby roads.
- A scaled plan for the tenant house and accompanying outbuildings, including the square footage.
- A signed statement from the county planning and zoning department that verifies that the request meets local zoning ordinances.

2. LOCAL RECOMMENDATION

The Cecil County Agricultural Preservation Advisory Board will evaluate your application and make a recommendation to the Foundation based on the farming operation's need for a full-time tenant farmer and the tenant house's impact on the agricultural use of the land. The advisory board will forward its recommendation in a letter to the Foundation including your application and the supporting documentation. The letter will include signed statements from the advisory board that the tenant house is necessary for the operation of the farm.

3. FOUNDATION APPROVAL

The Foundation will review the tenant house request based on its proposed location and its impact on agricultural use of the land and on the need for a full-time tenant to support the farming operation. If the Foundation approves the proposed tenant house, you will receive a confirmation letter of that approval. The letter will allow you to apply for a building permit. There is no payback because no acreage will be excluded from the easement.

A tenant house approved by the Foundation can only be used by tenants fully engaged in operation of the farm. The house cannot be used as a dwelling by the landowner nor as a rental property to a tenant not fully engaged in the operation of the farm.

Fact Sheet #5: Small Properties in the Agricultural Land Preservation Program

This Fact Sheet describes how the Agricultural Land Preservation Program works and its limitations for owners of small properties interested in participating in the program.

Minimum Acreage Criteria

With Title 15 of the Code of Maryland Regulations (COMAR), the Maryland Agricultural Land Preservation Foundation establishes size criteria for the formation of agricultural preservation districts. In attempting to set a fair balance between the program's interest in amassing as much contiguous* agricultural land as possible and the average farm size in Maryland, the Foundation established 50 contiguous acres as the minimum size for the establishment of agricultural preservation districts and the purchase of easements. If you own property which totals less than 50 contiguous acres, however, you have several opportunities to participate in forming a district and selling a development rights easement. For more information about districts and easements, see [Fact Sheet 1](#), "Agricultural Preservation Districts" and [Fact Sheet 2](#), "The Easement Acquisition Program."

Small Properties as Agricultural Preservation Districts

If your property has met all the other eligibility criteria except for size, you may still participate in the Agricultural Land Preservation Program if:

- the property is contiguous to an existing agricultural preservation district or easement property; or,
- you and your neighbor(s) petition to establish individual contiguous districts at the same time which collectively provide at least 50 acres; or,
- the county government and the Foundation concur that the property has "extraordinary agricultural capability and is of significant size." Such a conclusion is rare for a smaller farm unless it has very productive soils and/or is a "specialized use" agricultural operation. A "specialized use" farm describes a commercially successful operation on less than 50 acres, such as a vineyard, orchard, or other fruit, berry or vegetable operation or an intensive animal operation such as dairy, livestock or poultry. Traditional field crops or woodland are generally not considered eligible. To qualify, the county must be willing to recommend it for Foundation consideration as an exception due to the extraordinary productive capability and/or the specialized use of a small property.

Small Properties as Easement Properties

Your eligibility to apply to sell a development rights easement on a small property is similar to your eligibility to establish an agricultural preservation district. Unless the district was formed for a less-than-50-acre property because of the exception for extraordinary production and/or specialized use, being eligible to sell an easement

will require the cooperation of your neighbors. The Foundation will accept your easement application if:

- your property is contiguous to a Maryland Agricultural Land Preservation Foundation easement property; or
- your property is contiguous to an existing county agricultural conservation easement property, a Maryland Environmental Trust easement property, or other conservation easement property with easements that are at least as restrictive as the Foundation's easement, and the adjacent easement property or properties total at least 50 acres in size or in combination with the proposed district; or
- you and your neighbor(s) apply to sell easements together. Both you and your neighbor(s) must receive contingent offers from the Foundation to purchase the easements, and you and your neighbor(s) must all accept the offers or none of the offers is valid. If your ability to sell an easement is contingent on your neighbor(s), you should discuss your intentions with them before districts are established to minimize misunderstanding. You may also wish to confer with your neighbor(s) on your respective asking prices; if any one of them is unrealistic and results in one of them not getting an offer, you also will not receive an offer.

Development Options for Owners of Small Properties*

Since October 1, 2003, the law allows you to choose either to retain eligibility for a maximum of three family lots or eligibility for a single unrestricted lot once you've entered the program.

If you choose the family lot option, you are eligible to apply for release of a one-acre lot for your personal residence or a one-acre lot for a dwelling for the personal use of one of your children if you have enough land to provide a density of one lot for a full 20 acres, subject to local density requirements. For example, if you have 25 acres and three children, you will only be eligible to request one owner's or one child's lot. Because you would need a full 70 acres for a second lot, you cannot expect more than one lot on a property smaller than 50 acres. Eligibility to apply for release of a family lot is extinguished when the owner who sold the easement or entered into a district agreement (if an easement is not sold) sells or otherwise transfers the property.

If you choose the unrestricted lot option, you are eligible to apply for release of a one-acre lot for yourself or anyone else, so long as the property meets the density requirement of one lot for a full 20 acres, subject to local density requirements. For example, if you have 25 acres, you are eligible to request one lot which you can retain for your personal use, the use of your family, or to sell on the open market. If you as the original owner do not apply for release of the unrestricted lot prior to selling or otherwise transferring the farming property, the eligibility to apply for the release of the unrestricted lot transfers to the subsequent owner and remains with the property until it is used.

A dwelling in existence at the time of easement settlement may be later released from the restrictions of the easement with up to a one-acre lot around it if you have at least a full 20 acres. If you request the release of a lot related to a pre-existing

dwelling, you will, however, use your eligibility for a family or an unrestricted lot. If you have chosen the family lot option, the dwelling can only be transferred to an owner who would be eligible for a family lot and only for his or her personal use. If you have chosen the unrestricted lot option, the pre-existing dwelling can be subdivided and transferred to anyone.

The release of a family or unrestricted lot or the lot around a pre-existing dwelling may be up to two acres in size if required by the local Health Department for septic reserve or by county regulations.

Because the construction of tenant houses is only allowed at a density of one tenant house per full 100 acres, you will not be eligible to request a tenant house as a program participant.

If these restrictions create problems for you, but you are still interested in participating in the program, you should address them **before** you establish a district or you should decide not to participate in the program. Confer with the Cecil County program administrator or contact the Foundation if you have questions about your plans for the property which may be affected by district or easement status.

Welcome to the Agricultural Preservation Program

Though the program is primarily directed at preserving large parcels for agricultural production, as an owner of a smaller parcel, you may still participate and preserve some of Maryland's finest farmland. By being aware of the restrictions and how they may affect your plans for the future, you can consult with the Cecil County program administrator or the Foundation to decide whether to take advantage of the program's benefits.

Fact Sheet #6: Subsequent Owners of District or Easement Properties

This Fact Sheet describes the benefits and restrictions to the current owner of property on which the previous owner had established an agricultural preservation district or sold a perpetual agricultural conservation easement.

Welcome to the Agricultural Preservation Program

You are automatically a member of the agricultural preservation program if you have purchased property that has been previously enrolled in an agricultural preservation district or a district that has sold a permanent agricultural conservation easement. Agricultural preservation district properties are protected by agreements temporarily restricting the use of the land recorded in the land records of Cecil County. Easement properties are protected by permanent agricultural conservation easements restricting the use of the land recorded in the county's land records.

If You Own a District

You own some of Maryland's finest farmland. To qualify as an agricultural preservation district, a property must meet certain criteria of productivity and size.

A district agreement incorporates three key elements.

- The property cannot be used for residential, commercial or industrial subdivision and development.
- The district agreement is a commitment of at least five years from the recordation date of the agreement. After this five-year commitment has been fulfilled, you must notify the Foundation if you wish to terminate the agreement.
- Early termination of a district is only allowed for documented cases of severe economic hardship and must be approved by the Cecil County Agricultural Preservation Advisory Board and the Board of Trustees of the Maryland Agricultural Land Preservation Foundation.

Staying in an agricultural preservation district provides three key benefits.

- As a landowner, you have the security of knowing that the land and any nearby districts are protected from development during the period of the agreement.
- You will be given an official acknowledgment from the Foundation and the county that farming is the preferred use of the land. While it cannot be guaranteed, such an acknowledgment is useful evidence if you must defend yourself against a nuisance complaint against your farming activities filed by your urban neighbors in court.

- You are eligible to apply to sell a perpetual agricultural conservation easement to the Maryland Agricultural Land Preservation Foundation. (See [Fact Sheet 2](#), "The Easement Acquisition Program.")

Development Options for Subsequent Landowners of Easement Properties

The only persons eligible to construct a dwelling for themselves or a child on the land are the ones who sold the easement to the Foundation. Successor landowners have no such right, even if they had an equitable interest in the land at the time that the easement was sold.

For agricultural districts recorded after October 1, 2003, who have not sold easements and for easements based on offers made after October 1, 2003, landowners are given an option to choose either to retain eligibility for release of a maximum of three family lots or eligibility for release of a single unrestricted lot. If the landowner chose the single unrestricted lot option and that lot has not yet been requested to be released, eligibility for that lot release conveys to subsequent owners until the lot release is requested. Family lots are only available to those landowners who sold the easement; eligibility to apply for the release of such lots is extinguished when the property is sold or otherwise transferred.

Though you do not have eligibility to apply for the release of one-acre lots for yourself or your children as the original easement seller did, you still have some development options.

- Existing Dwellings – On easement properties whose option contract was approved before October 1, 2003, any principal dwelling or tenant houses that existed at the time of settlement on the easement can be excluded from the restrictions of the easement and conveyed to others surrounded by a lot of up to one acre. If the easement was based on an offer approved after October 1, 2003, a subsequent owner cannot exclude a pre-existing dwelling from the easement unless eligibility for an unrestricted lot has conveyed with the property. If eligibility for an unrestricted lot still remains, excluding a pre-existing dwelling from the easement can be done by using your eligibility for that unrestricted lot. Contact the Cecil County program administrator if you wish to apply to the Foundation for approval of such a lot exclusion for a pre-existing dwelling.
- Tenant Houses - The Foundation defines a tenant house as a dwelling built exclusively for the purpose of housing a tenant fully engaged in the operation of the farm. (An owner of the property cannot also be its tenant.) After Foundation approval, you may construct tenant houses at a density of one tenant house per full 100 acres. Tenant houses built after the district agreement went into effect cannot be subdivided or conveyed separately from the original parcel, and the land beneath and surrounding the house cannot be released from easement restrictions. Contact the Cecil County program administrator if you wish to apply to the Foundation for approval to construct a tenant house on your property.
- Agricultural Subdivisions - The original easement property may be subdivided for agricultural purposes only after Foundation approval, even if it was composed of more than one parcel originally titled separately. Agricultural subdivision is not a right, but the Foundation recognizes that certain unusual

circumstances may justify agricultural subdivision. The Foundation will not approve agricultural subdivision, for example, to create or enlarge a residential lot or to divide a farm between heirs. Similarly, the Foundation will not approve an agricultural subdivision resulting in less cost-efficient farming. The Foundation's policy is that the parcel conveyed must be substantial enough in size that it maintains viable agricultural utility. The subdivided portion and all remaining parcels must be at least 50 acres, and each parcel must meet the minimum soils requirement for district establishment. The boundaries of a requested agricultural subdivision, when possible, must follow a hedge row, stream, or other physical characteristic of the farm. Any requested agricultural subdivision must be consistent with county planning and zoning regulations as evidenced by a county letter of approval and recommendation or statement of conformity. Contact the Cecil County program administrator if you wish to apply to the Foundation for approval for an agricultural subdivision of your property.

Thank You

As a subsequent owner, your support in preserving Maryland agriculture becomes more important every year. We are proud to lead the nation in the farmland acreage preserved for future production, but we must rely on people like you to maintain productive stewardship of the land.