
Overview of Farmland Preservation in Maryland

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Disclaimer: The following is intended for educational purposes only and is not legal advice.

Introduction

Federal and state programs aimed at the protection and conservation of rural lands have been around for decades. Agricultural preservation programs are popular in Maryland and can be useful tools for new and beginning farmers to consider before and after purchasing property. There are many incentives for farmers to preserve farmland, including but not limited to, tax incentives, securing operational funding, personal conservation goals, and preserving a family legacy. Farmers, however, prior to enrolling in a preservation program, need to have to a full understanding of how farmland preservation will impact future land uses.

Generally, there are three main types of farmland preservation programs in Maryland: easement sale, easement donation, and transferable development rights sale. The general purpose of preservation programs is to set aside large blocks of rural lands for the protection of open-space, natural and scenic resources, and to foster rural industries such as agriculture and forestry by limiting non-agricultural uses on existing rural and agricultural lands.

What is a Conservation Easement?

In this context, an easement refers to restrictions placed upon the land that essentially removes certain rights to develop on the property. An agreement called a “deed of conservation easement” is made, wherein a landowner agrees to conserve several acres of land and in exchange receives cash payments or tax credits. The easement is conveyed to an eligible easement holder, typically the local or state government or a land trust. Deeds of conservation easement are usually recorded in the county land records office. A landowner may sell or otherwise convey land protected with a conservation easement. Since the easement is permanent, however, the restrictions “run with the land,” meaning they apply to the land perpetually regardless of the owner or operator, and therefore apply to all future owners and lessees of the property.

The easement often limits the development of property through conditions on allowable land uses, such as limiting or prohibiting subdivision and commercial land uses. Enhanced conservation practices may also be required, for example creating riparian buffers and creating wetland protections plans. A conservation easement typically does not grant public access to a property, but the easement *holder* does gain a right to access the property to monitor, as well as the authority to enforce, the terms of the easement. The landowner and the easement holder work together to finalize the terms of the easement, which are tailored to fit a landowner's individual situation.

Specific terms may be mandated, depending upon the program or easement holder. Most conservation easements provide a degree of flexibility to adapt to future needs by providing the holder discretion to approve changes under discretionary approval clauses or to issue compatible use authorizations. However, the basic principles of contract interpretation apply to conservation easements and the terms that restrict the use of the land, including restrictions on development, uses, and open space maintenance, can be strictly construed if a conflict arises. For example, if “commercial activities” are prohibited under the easement, a farmer who wants to expand or add a retail component to the farm may need to seek approval from the easement holder first. Careful attention to the terms of a deed of conservation easement, therefore, is necessary to ensure it adequately incorporates considerations for the economic concerns and viability of the farm as a continuing business entity.

Easement Sales

Maryland Agricultural Land Preservation Foundation

The Maryland General Assembly created the Maryland Agricultural Land Preservation Foundation (MALPF) in 1978 with the purpose of acquiring easements to restrict the use of agricultural lands in order to “curb the spread of urban blight and deterioration,” and “protect agricultural land and woodland as open-space land.” MALPF was one of the first state easement purchase land preservation programs in the country and it continues to be one of the most successful. The program is administered by county and State in an equitable partnership.

In general, owners of farmland that meets the minimum size and soil eligibility criteria and is located outside a 10-year water and sewer service area can apply for an easement sale. Counties rank the applications to be considered in a given easement acquisition cycle based on factors like productivity, location, conservation and management plans, and commitment; each county can have its own unique local criteria as well. Two independent fee appraisers are selected to establish a fair market value for each property. The Foundation calculates an agricultural value for the property, which is its agricultural production value. Each county prioritizes its applicants by its own ranking system and forwards its prioritized list to the state which makes the offers to selected applicants. Upon selection and settlement of the sale, the landowner is typically paid through an Installment Payment Plan (IPP) over the course of 10 – 30 years. The Foundation web page provides numerous fact sheets to help applicants navigate the easement acquisition process and answer questions about permitted uses for preservation properties <https://mda.maryland.gov/malpf>.

Rural Legacy Program

Established in 1997, Maryland’s Rural Legacy Program is a state funding program administered through the Maryland Department of Natural Resources (DNR) that encourages local government and private land trust sponsors to partner together in acquiring conservation easements from willing landowners to “preserve large, contiguous tracts of open space that contain valuable agricultural, cultural, forestry or natural resources.” The Rural Legacy

program focuses on land conservation investments that protect the most ecologically valuable properties that directly impact the Chesapeake Bay and local waterway health. Rural Legacy easements typically require the preparation and approval of a Soil Conservation and Water Quality Plan and/or a Forest Stewardship Plan. The program requires applicants to apply for a Rural Legacy Area designation. If an area is approved by the Rural Legacy Board, then property owners within a Rural Legacy Area can apply to sell an easement. The program also allows for property owners to donate a conservation easement or to sell or donate a fee simple interest in the qualifying real property. The application process and Rural Legacy Program Grants Manual are provided on the DNR website.

<http://dnr.maryland.gov/land/Pages/RuralLegacy/home.aspx>

County Easement Programs

Certain counties, such as, Harford, Frederick, Carroll, Howard, Calvert, and Anne Arundel, have county easement purchase programs. Such programs vary widely in structure, but the application requirements and easement restrictions are usually patterned after the state easement program. Contact information for each county's relevant department are provided in the Table 1.

MARBIDCO Next Generation Farmland Acquisition Program

The Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) is a quasi-public corporation with the mission to “to help Maryland’s farm, forest, and seafood businesses achieve sustainable viability and profitability now and into the future.” Through its Next Generation Farmland Acquisition Program MARBIDCO offers up to 51% of the Fair Market Value (FMV) of the land only (with a cap of \$500,000), on a competitive application basis, to qualified young or beginning farmers who have trouble entering the agricultural profession due to high land costs or inadequate financial capital. Following the land sale transaction, the purchaser is required to sell a permanent easement on a land to a rural land preservation program (thus extinguishing the development rights on the property forever). Once a permanent easement has been subsequently facilitated, the purchaser is obligated to repay MARBIDCO the original Next Gen Program Option Purchase amount, plus a 3% administrative fee. Interested applicants, after identifying a property, should start the process by contacting the county office (Table 1) and determining whether a particular property is not already under a conservation easement and whether it is a potential property for the program.

Easement Donation

Easement donations operate to a large extent in the same manner as easements sales, the largest difference being that the landowner does not receive payment for the lost development value of the property. Instead, the landowner is allowed to claim a charitable deduction for federal income taxes and a credit for state income taxes for the lost value associated with protecting the land. In addition, there is a property tax credit and possible federal estate tax exemptions.

To qualify for the federal deduction under Internal Revenue Code 170(h), a donation has to meet three general requirements. The donation must: (1) be of a qualified property interest (value determined by a qualified appraiser), (2) be made to a qualified easement-holder, and (3) be made exclusively for conservation purposes protected in perpetuity. There are guidelines for what makes appraisers and easements holders “qualified.” County easement programs may not always require a “qualified” appraiser, but landowners intending to claim state and federal tax deductions should comply with the law and regulations governing deductions for contributions of conservation easements. Depending upon the land use type and the landowner's taxable income, this deduction can be claimed across multiple tax years, which is often needed as many landowners lack the income to claim such a large donation in a single year. Maryland income tax credit is in addition to other tax deductions. The deduction is limited to \$5,000 per year and the landowner can carry forward the remaining credit amount up to 15 years for a maximum credit of \$80,000. The DNR has a useful summary page for federal and state tax benefits of conservation easement donations.

For estate-tax purposes, a conservation easement limits the amount of development that can occur, thus lowering the appraised value of the land and reducing the taxable estate. This makes conservation easements effective tools for reducing estate taxes. The Agriculture Law Education Initiative has a guide, *Conservation Easements: A Useful Tool for Farm Transition and Estate Planning* that provides more details on several ways agricultural land preservation can also serve as an estate planning tool. <http://umaglaw.org/publications-library/estate-planning-and-conservation-easements/>

Maryland Environmental Trust

The Maryland Environmental Trust (MET) was created in 1967 to “to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including, but not limited to land, water, air, wildlife, scenic qualities, [and] open spaces.” MET determines whether preservation of the offered land would confer a significant public benefit in the form of woodland, wetlands, farmland, scenic areas, historic areas, wild and scenic rivers, and undisturbed natural areas. The easement donation process through MET is outlined on their webpage <http://dnr.maryland.gov/met/Pages/default.aspx>.

Local and Private Land Trusts

Local or private land trusts may also take on conservation easements. Often, MET will partner with other organizations whose purpose and goals are similar through cooperative agreements or as an easement co-holder. Collaborative agreements between land trusts helps avoid unnecessary competition and allows the trusts to increase land conservation efforts with expanded funding options and shared expertise. The MET provides a list of local land trusts that operate in Maryland. Scenic Rivers Land Trust, Chesapeake Wildlife Heritage and the Eastern Shore Land Conservancy are examples of private land trusts that can be the recipient of a donated conservation easement. Contacting the county planning or land preservation office is the best way to gather information about local land trust options (see Table 1).

For tax purposes, any private land trust chosen for an easement donation must be “qualified” according to federal and state guidelines. For federal tax deductions, the organization must be either run by the local or state government or a non-profit organization (according to IRC § 501(c)(3)), with the purpose of protecting and enforcing the conservation easement. The land trust generally must have an established monitoring program such as annual property inspections to ensure compliance with the conservation easement terms and to protect the easement in perpetuity. The organization must also have the resources to enforce the restrictions of the conservation easement, which may be in the form of conservationists who inspect the property and prepare monitoring reports. The Maryland state tax credit is only available to perpetual easements conveyed to MET, Maryland DNR or MALPF, and approved by the Board of Public Works.

Green Print Program

In the late 1990’s MDNR began identifying the most ecologically important lands in the State, referred to as Maryland’s Green Infrastructure (GI). Through the Green Print Program the State makes efforts to delineate and protect the most ecologically significant lands in the state using up-to-date mapping techniques and making offers to landowners for targeted acquisitions and easements. There is no application process because the state will identify and make offers for lands it deems eligible. Maryland’s Green Print Map is one resource that displays information about whether or not a property may have a MALPF, MET, or Rural Legacy easement. <https://dnr.maryland.gov/land/Pages/Green-Infrastructure-Mapping.aspx>

Purchase of Development Rights (PDR) & Transferable Development Rights (TDR)

Purchase or Transfer of Development Rights programs are another vehicle for preserving rural land and encouraging development in existing communities. Approximately ten Maryland Counties have programs that allow development rights to be sold or otherwise conveyed to increase the development potential on another property. A key approach to transferable development rights programs is to use private sector investments, rather than public sector funds, to preserve farmland.

Through voluntary TDR programs, developers buy development rights from owners of rural land within a county’s designated “sending areas,” which county governments identify for preservation. A perpetual conservation easement is then placed on the property from which development rights were purchased or transferred. Developers can use their purchased development rights to build more residences, increase commercial square footage or gain other marketable features in “receiving areas,” located in areas where development and infrastructure are planned and desired. For an explanation of the many types of zoning restrictions that could impact of the use of farmland, refer to the chapter on *Understanding Zoning for New Farm Enterprises*. Also, contact your local county planning department to determine whether they have PDR or TDR programs and how to participate.