

Agricultural Land Preservation Act
Howard County,
Maryland

HOWARD COUNTY CODE
NATURAL RESOURCES

SUBTITLE 5. AGRICULTURAL LAND PRESERVATION*

* Editor's note—Subtitle 5, §§ 15 501 - 15.510, was repealed and reenacted to read as set out in §§ 15.500 - 15.521 by C.B. 10, 1993. The subtitle was formerly derived from C.B.'s 13,1978; 47 1979; 2,1981; 7 1983; 39 1983; 3 1985; 49,1986; 72,1987; 3,1988; 62,1988; 9, 1989; 17, 1989; 45,1989; 151, 1991.

Sec. 15.500. Short Title; findings; purpose.

(a) Short Title: This subtitle may be known as the Howard County Agricultural Land Preservation Act.

(b) Findings: Much of the agricultural land in the county is in jeopardy of being lost for any agricultural purpose because of development pressures stemming from rapid growth in the region's population. It is in the public interest to preserve these agricultural acres because:

(1) Agricultural lands enhance the material and aesthetic quality of life in the county and are valued by both urban and rural residents;

(2) Maintaining viable farms makes possible the provision of fresh, high quality food close to the consumer;

(3) Agricultural lands serve as valued natural and ecological resources by providing needed open spaces for clean-air, sheds, watershed, and floodplain protection;

(4) Preservation of agricultural land provides an eventual saving in the cost of public services that development would otherwise require.

(c) Purpose: The purpose of this act is to protect the health safety and well-being of present and future residents of Howard County by conserving and protecting 30,000 acres of agricultural land as an environmental resource of major importance and as the basis of a viable sector of the county's economy. The county intends to acquire the development rights by purchase of the land, by purchase of the development rights and by acceptance of dedicated remainders from cluster subdivision pursuant to the subdivision and zoning regulations.

(C.B. 10, 1993)

Sec. 15.501. Nonapplicability.

Except as expressly provided in this subtitle, the provisions of this subtitle do not apply to agricultural land preservation easements acquired by the county or districts established before the effective date of this act [May 1, 1993]. The law in effect at the time an easement was acquired will continue to govern easements acquired before the effective date of this act.

(C.B. 10, 1993)

Sec. 15.502. Definitions.

(a) Administrator: "Administrator" means the county employee assigned to administer the provisions of this subtitle.

(b) Agricultural Use: "Agricultural use" means farming and includes:

(1) Dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture, and animal and poultry husbandry;

(2) The breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes;

(3) Construction and maintenance of barns, silos and other similar structures, the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made; and

(4) Other uses directly related to or as an accessory use of the premises for farming and agricultural purposes.

(c) Board: "Board" means the Howard County Agricultural Land Preservation Board as described in section 15 518 of this subtitle.

(d) Dedication; Dedicated: "Dedication" or "dedicated" refers to the process by which a landowner places a preservation parcel under a restrictive easement of the Howard County Agricultural Land Preservation Program.

(e) Department: "Department" means the department of planning and zoning.

(f) Development Right: "Development right" means the right to develop the parcel for purposes other than agricultural uses. "Development right" includes, but is not limited to, the right to use the property for industrial or commercial uses, for residential purposes (except as set forth in this subtitle), display of signs or billboards (except as permitted by resolution of the county council, in connection with the agricultural use of the parcel), or the storage or depositing of trash, junk, rubbish or debris.

(g) Director: "Director" means the director of planning and zoning.

(h) Easement; Agricultural Land Preservation Easement: "Easement" means a recorded restriction on exercising the development rights on land.

(i) Grantor: "Grantor" means the landowner who conveyed an easement on a parcel to the county.

(j) Landowner: "Landowner" means the legal owner or owners of a parcel.

(k) Lesa: "Lesa" means land evaluation and site assessment, a formula for determining the agricultural viability of land based on soil survey analysis (land evaluation) and on potential for long-term agricultural use within a broader land use planning context (site assessment).

(l) Preservation Parcel: "Preservation parcel" means a parcel of land which is created:

(1) In a subdivision after clustering; or

(2) On a density exchange option sending parcel or on a cluster exchange option sending parcel pursuant to section 104.3 of the zoning regulations.

(m) Pricing Formula: "Pricing formula" means a formula adopted by resolution of the county council to assign point values for various characteristics of a farm which make its preservation as agricultural land more or less valuable to the county.

(n) Public Interest Use: "Public interest use" means a use which:

(1) Does not unduly interfere with the agricultural use of property subject to an easement; and

(2) Has been determined by the county council to be a public interest use.

(o) Tenant Housing: "Tenant housing" means housing for workers fully engaged in operation of the agricultural use and their families.

(C.B. 10, 1993)

Sec. 15.503. Methods of acquiring easements.

The county may acquire agricultural land preservation easements on land in the county in the following ways:

(a) By purchasing the development rights on eligible land.

(b) By dedication pursuant to the provisions of the zoning regulations concerning dedication of preservation parcels.

(c) By donation of the development rights on eligible land from the owners

(C.B. 10, 1993)

Sec. 15.504. Purchase of easements.

(a) There is a plan to finance the purchase of agricultural land preservation easements. The county executive shall establish methods of paying landowners for these easements, including long-term obligations of the county in the nature of an installment purchase contract. Since these contracts involve the spending of county money in future fiscal years, they are subject to approval by the county council, pursuant to section 612 of the Howard County Charter. They shall be exempt from the provisions of article 31, sections 9, 10, and 11 of the Annotated Code of Maryland.

(b) The price of an agricultural land preservation easement shall be based on a pricing formula developed by the board and approved by the county executive and by resolution of the county council.

(C.B. 34, 1994)

Sec. 15.505. Administration.

(a) Procedures: The board may develop procedures for the review of parcels offering development rights to the county, the rating of desirability, the pricing of an agricultural land preservation easement, and the functioning of the agricultural land preservation program and other related matters.

(b) Purchase Price Formula: There is a purchase price formula for determining the price the county will pay per acre to purchase an agricultural land preservation easement. The formula shall be set by resolution of the county council.

(c) Maps and Records: The official maps of parcels subject to an agricultural land preservation easement are the 1" = 600' zoning maps. The administrator is responsible for seeing that these maps are updated on a regular basis to reflect the addition of new parcels and the amendment of existing parcels.

(C.B. 10, 1993)

Sec. 15.506. Eligibility criteria.

(a) Buying Easements: Howard County may buy the development rights on a parcel provided that the purchase is consistent with the intentions and policies of the general plan and the parcel meets each of the criteria listed below:

(1) Developable: The parcel shall be capable of being further developed to a greater residential density than presently exists or for nonagricultural uses. To meet this criteria, the parcel shall:

(i) Be in a zoning district which permits development to a higher residential density than presently exists; and

(ii) Be capable of being subdivided or developed for nonagricultural uses by right.

2) Size: The parcel shall meet one of the following size criteria:

(i) It is a parcel of at least 100 contiguous acres;

(ii) It is a parcel of at least 25 acres and is contiguous to at least 50 acres of land which is subject to an agricultural land preservation easement; or

(iii) It is one of several contiguous parcels (at least 25 acres each) with a total acreage of at least 100 acres, for which an application to sell the development rights is submitted by each landowner and each landowner agrees that the county's acquisition of an easement on each parcel is contingent upon the acquisition of easements on all of the other contiguous parcels.

(3) Soils: The parcel shall meet the following soils criteria:

(i) More than 50% of the parcel shall be U.S. Dept. of Agriculture capability class I, II and III soils, and more than 66% of the parcel shall be class I through IV soils; and

(ii) The parcel shall have:

a. A complete soil conservation and water quality plan approved by the local soil conservation district; and

b. Verification by the local soil conservation district that the plan reflects current conditions and activities on the land.

(b) Dedicated Acquisitions: The criteria for the acceptance of development rights on a preservation parcel are that the parcel, if farmed, have a complete soil conservation and water quality plan approved by the local soil conservation district and verification that the plan reflects current conditions and activities on the land.

(c) Donated Acquisitions: The criteria for the acceptance of donated development rights on any parcel are that the parcel:

(1) If farmed, have a complete soil conservation and water quality plan approved by the local soil conservation district and verification that the plan reflects current conditions and activities on the land.

(2) The parcel shall be capable of being further developed to a greater residential density than presently exists or for nonagricultural uses. To meet this criteria, the parcel shall:

(i) Be in a zoning district which permits development to a higher residential density than presently exists; and

(ii) Be capable of being subdivided or developed for nonagricultural uses by right.
(C.B. 10, 1993)

Sec. 15.507. Process for buying easements.

This process applies only to buying easements and does not apply to donated easements or to easements acquired by dedication of a preservation parcel.

(a) **Batching:** The board will consider applications to sell development rights in batches, based on the number of anticipated applications and on available funds. The board shall establish the maximum amount to be spent on easement purchases for each batch. The board shall advertise when it will accept applications for a given batch and when the application period will end.

(b) **Applications:** An application to sell the development rights shall be submitted to the administrator by the landowner. The application shall be in a form approved by the department, shall contain the information required and shall be accompanied by a nonrefundable application fee, the amount of which is set by resolution of the county council.

(c) **Number of Applications:** A landowner may submit an application for each parcel or may submit a single application as part of a package for multiple contiguous parcels.

(d) **Review by Administrator:**

(1) The administrator shall review each application to determine if all eligibility criteria for acquiring an easement are met.

(2) If the eligibility criteria are met, the administrator shall evaluate the parcel, considering geographic location, productivity, soil characteristics, accessibility, size, developability, contiguity to other land on which the county holds easements, restrictions and covenants on the land, comments from other county departments, and any other information which may assist the board in evaluating the desirability of the property.

(3) The administrator shall prepare a detailed report including a LESA score on the parcel and the pricing formula score and shall submit the report, the application and the administrator's evaluation and recommendation to the board for its consideration.

(4) If the eligibility criteria are not met, the administrator shall reject the application and shall notify the landowner of the rejection and the reason(s) for rejection. The landowner may request the board to review the administrator's design to reject the application.

(e) Reviews by Board:

(1) The board shall review the application, the administrator's report and recommendation and shall make an on-site inspection of the parcel.

(2) The board shall hold a public hearing to receive comments from the public as to whether the parcel offered is acceptable and desirable.

(3) After the public hearing, the board shall vote whether or not to continue considering acquisition of the easement. An affirmative vote of at least 5 members is required before continuing to consider acquisition of the development rights.

(4) After voting to continue considering acquisition of the development rights on a parcel the board shall determine the price to be offered according to the pricing formula and shall add optional points, if any, according to the pricing formula.

(f) Prioritization: After completing all the steps listed in (e) above for all parcels in the batch, the board shall rank the applications under consideration in order of their total point scores, from highest to lowest.

(g) Purchase:

(1) Offers to landowners: After determining the price to be paid per acre, based on the pricing formula, the board shall make an offering proposal to the landowner to purchase the development rights, beginning with the property with the highest point score and proceeding in order of rank to the property with the lowest point score, until the funds available for the batch have been committed.

(2) Recommendation to county executive: If the landowner agrees to the price, terms and conditions of the offering proposal, the board shall advise the county executive of the agreement in a written notification briefly describing the property and the price, terms and conditions agreed upon.

(3) Action by county executive: The county executive may not modify the agreed-upon price, terms and conditions, and may only approve or disapprove the purchase as proposed.

(4) Installment purchase; multi-year agreement: if the county is to pay the price in installments, county council approval of a multiyear agreement is required, pursuant to section 612 of the Howard County Charter.

(5) Deferment to next hatch: If the total amount of money available for the batch has been committed for the purchase of development rights and offers have not been made on all properties in the batch, the board may recommend that some or all of the remaining applications in the batch be considered with the next batch
(C.B. 10, 1993)

Sec. 15.508. Process for acquiring an easement by donation.

This section applies only to the donation of agricultural land preservation easements.

(a) A landowner whose parcel meets the criteria of section 15.506(c) may apply to donate an easement to the county.

b) The application shall be completed by the landowner and submitted to the administrator.

(c) The administrator shall make a report and recommendation to the board. The board shall then make a recommendation to the county executive whether or not to accept the donation.

(d) If the county executive agrees to accept donation of an easements the executive shall send a letter to the landowner accepting the offer.

(C.B. 10, 1993)

Sec. 15.509. Process for acquiring an easement by dedication of a preservation parcel.

The administrator is authorized to accept easements on preservation parcels which meet the criteria of section 15.506 b) during the subdivision process as set forth in the subdivision regulations and to notify the board of the acquisition.

(C.B. 10, 1993)

Sec. 15.510. Fee simple acquisitions.

Funds dedicated to the agricultural land preservation program may be used to purchase land in fee simple, provided that the land shall then be subject to all the restrictions of an agricultural land preservation easement.

(C.B. 10, 1993)

Sec. 15.511. Restrictions.

(a) The restrictions and covenants imposed by the agricultural land preservation easement shall be held by the county or it assigns in perpetuity and shall run with the land and bind all subsequent owners.

b) Land subject to an agricultural land preservation easement may not be:

(1) Developed for purposes other than agricultural uses.

(2) Used for commercial, industrial or residential purpose except as provided in section 15.514 or section 15.516.

(3) Subdivided except as provided in section 15.514.

(c) No dwellings may be constructed on land subject to an agricultural land preservation easement except as provided in section 15.514.

(C B. 10, 1993)

Sec. 15.512. Obligations.

(a) Soil conservation and Water Quality Plan: The landowner shall continue to maintain a current soil conservation and water quality plans approved by the local soil conservation district, and shall implement the plan according to the approved schedule.

(b) Agricultural Value Not To Be Reduced: The owner shall not reduce the agricultural value of the land by use of practices unacceptable to the United States Department of Agriculture and the Maryland Department of Agriculture. If the land is not cropped or managed for pasture, it shall be maintained to control erosion and noxious weeds.

(C.B. 10, 1993)

Sec. 15.513. Enforcement/penalties.

(a) Inspection: The administrator or the administrator's designated representative shall have the right, with prior notice to the landowner, to enter the land on which the county holds an agricultural land preservation easement in order to inspect for compliance with the conditions of the deed of easement.

(b) Civil Penalties: The county may impose civil penalties pursuant to title 24 of the Howard County Code for failure of the landowner to maintain and implement the approved soil conservation and water quality plan, which failure shall be a class A offense.

(c) Damages: The county may seek monetary damages of up to 25% of the value of the easement from a landowner who substantially reduces the value of the easement by engaging in practices which are unacceptable to the U.S. Department of Agriculture or the Maryland Department of Agriculture.

(d) Injunction: In addition to other remedies, the county may seek an injunction to halt practices which violate the terms and conditions of the easement.

(C.B. 10, 1993)

Sec. 15.514. Rights.

(a) General: The landowners retains all rights of a fee simple owner, except for the development rights which are extinguished by the easement and the restrictions and conditions imposed in the deed of easement pursuant to this subtitle The agriculture land preservation easement does not grant the public any rights of access or rights to the use of the land.

(b) Limited Number of 1-Acre Lots: This subsection applies only to parcels of 50 acres or more. A landowner may subdivide one 1-acre lot per 50 acres or portion thereof of the total contiguous acreage which is subject to the easement. The county will release the easement for each one-acre lot permitted after all the following conditions are met:

(1) The board has approved the release of the easement after determining that each lot is located to minimize any disruption of existing or potential future agricultural activities; and

(2) The landowner repays the county the price per acre that the county paid for the easement for each lot released.

(c) Limited Number of Dwellings: Only the following dwellings, which may not be subdivided from the land, may be constructed on land subject to an agricultural land preservation easement, after the board has determined that they are located so as to minimize disruption of existing or potential future agricultural activities:

(1) An existing dwelling which is no longer habitable may be replaced, provided that the existing dwelling is demolished;

(2) If permitted under the deed of easement; tenant housing on parcels of 50 acres or more may be constructed at a density of 1 tenant dwelling per 25 acres; this density includes tenant housing which existed when the county acquired the easement;

(3) A landowner's dwelling, if:

(i) There were no dwellings other than tenant housing on the parcel when the county acquired the easement; and

(ii) The parcel is 50 acres or larger; and

(iii) The parcel is not a Subdivision or separate portion of the parcel on which the county acquired the easement, unless the landowner has relinquished the right to subdivide one of the 1-acre lots allowed pursuant to section 15.517.

(d) Parcel Subdivision: If the right to subdivide has not been relinquished under the terms of the deed of easement, a landowner may subdivide a larger parcel into smaller parcels if all the following conditions are met:

(1) The board has reviewed the proposed subdivision and has determined that it meets requirements of this paragraph;

(2) Before subdivision the parcel is at least 100 acres;

(3) After subdivision, each parcel is at least 50 acres;

(4) After subdivision, the number of dwellings on each parcel does not exceed the numbers permitted by this section; and

(5) The deed of easement on the parcel is amended to allocate among the subdivided parcels any unexercised rights to create residential lots pursuant to this paragraph to ensure that no additional residential lots or dwellings are permitted as a result of the parcel subdivision.

Sec. 15.515. Exchange of easements.

In very limited circumstances and only where the exchange of easements would benefit the agricultural land preservation program, the county may release the easement from land subject to a purchased or donated easement in exchange for an easement on contiguous land of equal or greater acreage and agricultural value. The exchange may not take place unless:

(a) The board approves the exchange; and

(b) The subdivision regulations permit the exchange; and

(c) The landowner bears all expenses in connection with the exchange, including, but not limited to, all subdivision fees, survey and engineering costs and any title search or title insurance required by the county.

(C.B. 10, 1993)

Sec. 15.516. Public interest uses.

At the request of the landowner and with the approval of the county council, the county may release the easement on up to 1 acre of land for a public interest use provided that:

(a) The board, after public hearing, has recommended the release of the easement for the public interest use; and

(b) The county council, after public hearing, has passed a resolution finding that the proposed use is in the public interest and authorizing release of the easement; and

(c) The landowner pays the county for the release at the same price per acre that the county paid to acquire the easement, plus interest at the general rate of interest.

(C.B. 10, 1993)

Sec. 15.517. Optional right to exchange children's or grantor's lots.

A landowner who has the right to create one or more 1-acre lots for the owner's personal use or the personal use of a child pursuant to the provisions of a deed of

easement recorded prior to the effective date of this act [May 1, 1993], may, instead, elect to create 1-acre lots permitted under section 15.514 on the following conditions:

(a) The landowner relinquishes any further rights to create lots pursuant to the existing deed of easement; and

b) in determining the number of lots allowed by this election, any 1-acre lots already created for the grantor or the grantor's children shall be deducted from the total number allowed pursuant to section 15.514;

(c) The deed of easement is amended to reflect the exercise of this option.

(C B. 10, 1993)

Sec. 15.518. Agricultural land preservation board.

(a) General Provisions: General provisions applicable to this board are set forth in subtitle 3, "Boards and Commissions," of title 6, "County Executive and the Executive Branch," of the Howard County Code.

(b) Establishment; Number of Members: There is an agricultural land preservation board consisting of 7 members.

(c) Qualifications:

(1) All members shall be residents of Howard County.

(2) 3 of the members shall receive at least 50% of their annual income, at the time of their appointment, from active farming or other agricultural endeavors.

(3) 4 of the members shall receive no income from active agricultural endeavors during their tenure on the board.

(4) No member shall be eligible to serve more than 2 successive terms.

(d) Executive Secretary: The administrator shall serve as the executive secretary to the board and shall attend meetings. The department of planning and zoning shall provide staff services to the board.

(e) Meetings: The board shall meet at least once every 3 months and more frequently as necessary to conduct the affairs of the board. Meetings shall be called by the chair or by any 2 members.

(f) Voting: The board shall operate on a "majority rule" basis except that 5 affirmative votes are needed to recommend to the county executive acquisition of an easement.

(g) Conflict of Interest: If a member of the board, his/her spouse, parent, child, or affiliated business interest has a financial interest in a parcel, an offer may be made to sell the easement to Howard County, provided that:

(1) Pursuant to provisions of the Howard County Charter and the Howard County Code regarding conflicts of interest, the county council has authorized the member to negotiate with the county for sale of easement; and

(2) The board member, in his/her board capacity does not participate in any discussions concerning price, terms of purchase or other issues related to the purchase; and

(3) The board member abstains from discussing and voting on the board's recommendation to the county executive regarding the purchase of the parcel, and the price and terms.

(h) Duties and Responsibilities: The board shall:

(1) Make recommendations to the county executive on the acquisition of easements as provided in this subtitle.

(2) Review proposals for the location of permitted lots and the construction of tenant housing on land subject to an agricultural land preservation easement.

(3) Review proposals for proposed subdivisions on land subject to an agricultural land preservation easement.

(4) Make recommendations to the county executive concerning its budget and appropriations requests.

(5) Report annually on the status of the program to the county executive and the county council.

(6) Recommend to the county executive and the county council the criteria and method for calculating the price for purchase of an agricultural land preservation easement.

(7) Solicit donations of funds to be used in this program from all appropriate sources and to solicit donations of easement on land.

(i) Agricultural Preservation Advisory Board: There is an agricultural preservation advisory board established pursuant to article 2, subtitle 5 of the Annotated Code of Maryland which makes recommendations on properties participating in the Maryland Agricultural Preservation Program. The advisory board consists of 5 members of the Howard County Agricultural Land Preservation Board who are also designated as members of the agriculture preservation advisory board. The other 2 members of the Howard County Agricultural Land Preservation Board shall not participate in the deliberations of the agriculture preservation advisory board.

(C.B. 10, 1993)

Sec. 15.519. Maryland Agricultural Preservation Districts— Authority; purpose; applicability.

(a) In accordance with title 2, subtitle 5, section 501 of the Agricultural Article of the Annotated Code of Maryland, and COMAR section 15.15.01, Maryland Agricultural Preservation Districts may be established in Howard County. These districts are subject to the provisions of state law and regulations concerning Maryland Agricultural Preservation Districts.

(b) In accordance with title 2, subtitle 5, sections 501 through 515 of the Agriculture Article of the Annotated Code of Maryland with COMAR section 15.15.01, Maryland Agricultural Preservation District establishment shall be finalized only upon formal notification to the County Council of Howard County by the Maryland Agricultural Land Preservation Foundation. This notification shall include a copy of the agriculture preservation district agreement signed by all parties and as recorded among the land records of Howard County. The administrator shall maintain an official file for all such Maryland Agricultural Preservation District agreements together with property descriptions and shall make these files available to the public.

(C.B. 10, 1993)

Sec. 15.520. Transitional provisions— Parcels subject to an agricultural land preservation easement acquired before the effective date of this act.

Except as specifically provided in this subtitle the laws in effect prior to the effective date of this act [May 1, 1993] governing the use of parcels subject to an agricultural preservation easement, including the types and number of dwellings and the potential for subdivision, shall continue to govern all parcels which were subject to an agriculture land preservation easement prior to the effective date of this act.

(C.B. 10, 1993)

Sec. 15.521. Transitional provisions— Districts.

(a) Districts Required Under Previous Law: Howard County agricultural land preservation law effective prior to the effective date of this act [May 1, 1993] required parcels to be included in agricultural land preservation districts before the landowner could offer the easement to the county. That law is repealed and replaced by this subtitle which does not require the establishment of agriculture land preservation districts. There are parcels, however, which are in agricultural land preservation districts and which have not sold the development rights to the county. This section deals with the status of the agricultural land preservation districts.

(b) Status of Districts Where the County Has Purchased an Easement: All the parcels upon which the county bought or was authorized to buy the easement before the effective date of this act were in agriculture preservation districts. The district agreement

for parcels subject to an agriculture preservation easement is superseded by the deed of easement and is hereby terminated.

(c) Status of Districts Upon Which the County Does Not Hold an Easement: Districts upon which the county does not hold an easement may continue as provided in the district agreement and pursuant to the law in effect when the district was created. However, the county shall terminate the district upon the written request of the landowner.

(C.B. 10, 1993)