

Kent County Agricultural Preservation Advisory Board

KENT COUNTY GOVERNMENT CENTER
400 HIGH STREET
CHESTERTOWN, MD 21620

AGENDA

Kent County Government Center

MEETING TO BE HELD VIRTUALLY via CONFERENCE CALL

October 14th, 2020

5:30 pm

COVID-19 Special Announcement Regarding Meeting Attendance

In response to the State of Emergency, individuals must refrain from attending meetings. Ag Preservation Board meetings are live streamed (<https://www.kentcounty.com/commissioners/meeting-live-video>), and citizens may call in with questions when the Chair opens the floor for comment.

To participate via Microsoft Teams:

1. Call **1-872-239-8359**
2. Enter Conference ID: **688 308 113#**

To participate via the Kent County Conference Bridge service:

1. Call **410-810-2213**
2. Enter PIN number **55266** when prompted.

Please mute your phone / device until the Commission Chair opens the floor for comment.

Approval of minutes from August 24, 2020, meeting

Discussion of Proposed Regulations regarding Corrective Easement Regulation and Overlay Easement Regulation (COMAR Title 15, Subsection 15, Chapters 11 & 16)Comments to MALPF Board

GENERAL DISCUSSION

Proposed Changes to Easement Prioritization Formula

Proposed Changes to Ag Preservation District Criteria

Adjourn

Meetings are conducted in Open Session unless otherwise indicated. Meetings are subject to audio and video recordings. Other business without assigned times may be discussed during the course of this meeting as time allows.

Kent County Agricultural Preservation Advisory Board

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Memorandum

To: Agricultural Land Preservation Advisory Board
From: Rob Tracey and Carla Gerber
Date: October 14, 2020

Proposed Changes to Easement Prioritization Formula:

In the August meeting, the Board discussed and reviewed a draft formula that would eliminate measures that are difficult for Staff to complete and increase points for farms that have applied in multiple cycles. Specifically, the Board discussed the possibility of reducing the number of points for the optional Historic, Scenic, or Habitat measure, deleting the P3 measure for Boundary and Buffer, and assigning points based on the length of ownership. The Board also discussed the possibility of requiring newly created districts from sitting out one application cycle and various ways to allocate points to farms that have applied to sell easements in multiple cycles.

The Board agreed that requiring newly created districts to sit out one cycle may be one way to boost the rankings of farms that have applied to sell an easement in multiple cycles. The Board discussed various options for discounting and asked Staff to explore weighting the EPF ranking over the discounting ranking. A chart showing different discounting options has been included in the packet.

On September 8, the APAB met with the County Commissioners for a work session to discuss changes to the EPF and district criteria. The Commissioners and the APAB agreed that the formula should award points to farms that have applied in multiple years and have districts on file for a long time. The County Commissioners and the APAB agree that newly created districts should have to sit out a cycle before applying to sell an easement.

To address the comments from the August meeting and the work session with the County Commissioners, Staff has created a draft EPF that adds a new measure F3 for "Value-added Production" and removes the measure for "Date of Application."

Staff has identified two options to better address the accounting for the date of district establishment.

1. Assign either a fraction of a point or a whole point based on the year that we consider the district to be established. So all districts established in 2020 would be treated the same even if the district was created in January or December. The bonus points would be added to the EPF scores and then the farms would be ranked on the total score.
2. Rank applications based on the date that the District Agreement (DA) was signed by the landowner, and then assign points in reverse order for the EPF rankings and the DA rankings (#1 rank gets most points). The final rankings would be based on the combined point totals. This method is the same one that is used for the discounting ranking system. This method makes a

bigger difference on the overall rankings than adding bonus points. It also gives equal weight to the EPF scores and age of district. For DA's signed on the same date, the higher ranking would go to the farm that ranked higher on the EPF. For tied total points, the higher ranking would also go to the farm that ranked higher on the EPF.

Staff believes that option 2 does more to help move up older districts that are often displaced by newer districts in the rankings.

Test rankings have been attached. We ran the calculations using four scenarios to allocate the percentage of points to each section. The test pool of applicants came from FY2020, but names have been replaced with a code letter and the farms for which you have a family connection were excluded.

Discussion of Proposed Regulations regarding Overlay and Corrective Regulations

The MALPF Board established a committee that is tasked with reviewing a number of regulations, policies, and procedures over the next few months. The committee met for the first-time last week (September 30th) to discuss revisions to the Corrective Easement Regulation and Overlay Easement Regulation. The MALPF Board requests feedback, from local Ag Preservation Boards, on the revised regulations. The Foundation will review counties' comments on the revised regulations at a later meeting.

Attached you will find the copy of proposed regulations. I have included the highlights below.

Overlay Easement Regulations:

- Allows for the creation of overlay easements if it is used to create a septic area for an adjoining property which has a failed septic system and there is no other reasonable alternative site or method available.
- Allows for the creation of overlay easements to prevent a significant determinantal impact to conservation values on an adjacent property as determined by the Foundation.
- Permits overlay easements to be created for any other lawful purpose not listed in regulations subject to conditions, requirements, and approval for the Foundation's Board.

Corrective Easement Regulations:

- Permits specific types of applications for corrective easements to be approved administratively by the Executive Director of the Foundation with concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture. Specifically, the following types of Corrective easements may be approved administratively:
 1. A correction that involves an error in the legal description or some other clerical error contained in the easement;
 2. A waiver of right to request termination of easement.
 3. A landowner's application to amend an existing easement to conform to the terms of the Foundation's current easement template.
- Requires an application to be completed before the Foundation may consider a request for a corrective easement.

Proposed changes to the Easement Prioritization Formula

Land Evaluation – 100 points

- Made LE Score worth no more than 30% of the total score. Desire is to give less emphasis on soils. Feeling is that if farms meet the 50% Class I – III threshold that they are quality farms and worthy of preservation.
- Dropped Soil Productivity Score that is based on the potential non-irrigated corn yield of individual soil units. This score is time consuming to calculate.
- Adjusted Capability Class Score to have a maximum of 100 points and give points for Classes I – VI. Justification: easier to calculate and MALPF uses Classes I-VI for the Ag Value Formula.

Farm Quality and Potential of Property – 100 points

F1: Farm Size – % Median – 25 points

- Altered the point values to 25, 10% ranges from less than 40% to greater than 270%

F2: On-Site Production – 25 points

- Changed the point values to 12, 5 percent ranges from less than 40% to greater than 95%

F3: Value-added Production- 10 points

- Added a criterion for farms that include animal production; produce a product for direct sale, or offer agritourism opportunities.

F4: Stewardship – 15 points

- Reduced to 15 points

F5: Farm Ownership and Operation – 16 points

- Rewrote and reduced number points
 - Applicant lives in the County and the applicant or a family member is actively farming the subject property. 16
 - Applicant lives in the County and the farm is leased to a farmer is not a family member. 12
 - Applicant does not live in the County and the applicant or a family member is actively farming the subject property. 8
 - Applicant does not live in the County and the farm is leased. 4

F6: Length of Ownership – 9 points

- Added new criteria to award points for the length of time a landowner or his/her family has owned a farm.
 - Applicant, or his family, has owned the farm for at least 25 years. 3
 - Applicant, or his family, has owned the farm for at least 40 years. 5
 - The farm has been designated as a Century Farm. 9

Priority Preservation Area Status – 100 points

P1: Protection of Surrounding Area – 25 points

- Increased points to 1 for each 100 acres of easements instead of each 50 acres and 1 point for each 200 acres of districts instead of 150 acres. It would then take a block of 2,500 acres of easements to reach the maximum of 25 points.
- Added clarifying language that State or Federal Resource Lands are equivalent to easements

P2: Distance from a Priority Funding Area – 25 points

- No change from current formula.

P3: New block of protected lands. Can only qualify for these points if receive 5 or fewer points in P1 – 20 points

- Do we add a qualifier of being at least 1 mile from a Community with sewer?
- 1 point for each 50 acres of districts. The subject property counts as an easement. It would only take 500 acres to reach the maximum number of points.
- This consideration does double count the preserved land, but I think that we can justify it by the desire to encourage the establishment of new blocks of preserved lands.

P4: Reapplication – 20 points

- Quadrupled points

P5: Historic, Scenic, or Habitat Value – 10 points

- Deleted “Located within Stories of the Chesapeake Heritage Area” – almost all of the County is in the Heritage Area.

MALPF EASEMENT PRIORITIZATION FORMULA

OWNER NAME(S) _____ NUMBER OF ACRES _____ Kent ALP FILE # _____

LAND EVALUATION SCORE _____ SITE ASSESSMENT SCORE _____ TOTAL POINTS THIS CYCLE _____

Land Evaluation Site Assessment (LESA) Ranking Guidelines for the Maryland Agricultural Land Preservation Foundation

LAND EVALUATION	SITE ASSESSMENT			
Soil Capability – 30%	Farm Quality & Potential – 35%		Preservation Area Status – 35%	
Capability Class Score	F1	Farm Size (compared to median size farm)	P1	Protection of Surrounding Area
	F2	On-site Production	P2	Distance from a Community with Sewer
	F3	Value-added Production	P3	New block of Protected Lands
	F4	Stewardship/Conservation of Land	P4	Reapplication
	F5	Farm Ownership and Operation	P5	Historic, Scenic, or Habitat Value of Site
	F6	Length of Ownership		

AGRICULTURAL SITE ASSESSMENT

No.	Farm Quality and Potential of Property	Points: _____ (100 pts. max.)																																																		
F1	<p>Farm Size (compared to the median size farm) How large is the proposed easement site compared to the average sized farming unit in the County? (Median size is based on the latest available Census of Agriculture). <i>Median farm size in Kent County is 123 acres. (Source: 2017 Census of Agriculture).</i></p> <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td>> 270%</td><td>25</td><td>220.01-230</td><td>20</td><td>170.01-180</td><td>15</td><td>120.01-130</td><td>10</td><td>70.01-80</td><td>5</td> </tr> <tr> <td>260.01-270</td><td>24</td><td>210.01-220</td><td>19</td><td>160.01-170</td><td>14</td><td>110.01-120</td><td>9</td><td>60.01-70</td><td>4</td> </tr> <tr> <td>250.01-260</td><td>23</td><td>200.01-210</td><td>18</td><td>150.01-160</td><td>13</td><td>100.01-110</td><td>8</td><td>50.01-60</td><td>3</td> </tr> <tr> <td>240.01-250</td><td>22</td><td>190.01-200</td><td>17</td><td>140.01-150</td><td>12</td><td>90.01-100</td><td>7</td><td>40.01-50</td><td>2</td> </tr> <tr> <td>230.01-240</td><td>21</td><td>180.01-190</td><td>16</td><td>130.01-140</td><td>11</td><td>80.01-90</td><td>6</td><td>< 40%</td><td>1</td> </tr> </table>	> 270%	25	220.01-230	20	170.01-180	15	120.01-130	10	70.01-80	5	260.01-270	24	210.01-220	19	160.01-170	14	110.01-120	9	60.01-70	4	250.01-260	23	200.01-210	18	150.01-160	13	100.01-110	8	50.01-60	3	240.01-250	22	190.01-200	17	140.01-150	12	90.01-100	7	40.01-50	2	230.01-240	21	180.01-190	16	130.01-140	11	80.01-90	6	< 40%	1	Points: _____ (25 pts. max.)
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F2	<p>On-Site Production What percentage of the site is being farmed for income (managed for a scheduled commercial harvest) or managed as woodland with a forest management plan that emphasizes wood product production? This land includes crop fields, pastureland, livestock operations, forest, agricultural buildings, etc.) This does not include lawns, home areas, or wetlands.</p> <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td>> 95%</td><td>25</td><td>75.01-80</td><td>17</td><td>55.01-60</td><td>9</td> </tr> <tr> <td>90.01-95</td><td>23</td><td>70.01-75</td><td>15</td><td>50.01-55</td><td>7</td> </tr> <tr> <td>85.01-90</td><td>21</td><td>65.01-70</td><td>13</td><td>45.01-50</td><td>5</td> </tr> <tr> <td>80.01-85</td><td>19</td><td>60.01-65</td><td>11</td><td>< 45%</td><td>3</td> </tr> </table>	> 95%	25	75.01-80	17	55.01-60	9	90.01-95	23	70.01-75	15	50.01-55	7	85.01-90	21	65.01-70	13	45.01-50	5	80.01-85	19	60.01-65	11	< 45%	3	Points: _____ (25 pts. max.)																										
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F3	<p>Value-added Production</p> <ul style="list-style-type: none"> • Farming operation includes animal production such as a dairy, poultry, beef cattle, or hogs 5 points • Farming operation does direct sales to consumers from the farm or from local markets 5 points • Farm offers agritourism opportunities 5 points 	Points: _____ (10 pts. max.)																																																		
F4	<p>Stewardship/Conservation of Land, Water, and Natural Resources To promote the protection of the Chesapeake Bay and its tributaries, MALPF requires that all easement properties have an implemented soil and water conservation plan. Does the landowner have an up to date Soil and Water Conservation Plan? Or, has the NRCS or local SWCD determined that the farm does not need any conservation plan? Does the landowner have an up to date Nutrient Management Plan?</p> <ul style="list-style-type: none"> • SWCP and Nutrient Management Plan are up to date. 15 points • SWCP is up to date. 7.5 points • Nutrient Management Plan is up to date. 7.5 points 	Points: _____ (15 pts. max.)																																																		
F5	<p>Farm Ownership and Operation Is the landowner a resident, full-time farmer, retired with the farm operated by family members, or does the landowner live on the farm and lease to a full-time farmer or does a part-time resident farmer operate the farm?</p> <ul style="list-style-type: none"> • Applicant lives in the County and the applicant or a family member is actively farming the subject property 16 points • Applicant lives in the County and the farm is leased to a non-family member 12 points • Applicant does not live in the County and the applicant or a family member is actively farming the subject property 8 points • Applicant does not live in the County and the farm is leased to a non-family member 4 points 	Points: _____ (16 pts. max.)																																																		
F6	<p>Length of Ownership How long has the landowner, or his family, owned the farm?</p> <ul style="list-style-type: none"> • Applicant, or his family, has owned the farm for at least 25 years 3 points • Applicant, or his family, has owned the farm for at least 40 years 5 points • The farm has been designated as a Century Farm 9 points 	Points: _____ (9 pts. max.)																																																		

No.	Priority Preservation Area Status	Points: _____ (100 pts. max.)
P1	<p>Priority Preservation Area (PPA) and Protection of Surrounding Area State and county policies have always emphasized the need to preserve large blocks of farmland for the continuance of agricultural operations. <i>How well is the subject property protected by surrounding lands that are permanently protected by easements or temporarily protected as agricultural districts?</i></p> <p>The points credited for proximity to permanent easements will carry twice the weight of points credited for Districts. The size of the applicant farm is given credit by including it in the easement acreage. No points will be awarded if the applicant property is not within the County's PPA.</p> <ul style="list-style-type: none"> Easements - The combined total acreage of the applicant property and all properties subject to an easement to the Maryland Agricultural Land Preservation Foundation, the Maryland Environmental Trust, or other easement(s) with similar restrictions, which are located within an adjacent block will be calculated. State or Federal Resource Lands will be considered as equivalent to easements. The applicant will receive one (1) point for each 100 acres, or portion thereof, of the total acres calculated in this subsection. Districts - The total acreage of all non-easement properties subject to a District Agreement with the County which are located within an adjacent block of the applicant's property will be calculated. The applicant will receive one (1) point for each 200 acres, or portion thereof, of the total acres calculated in this subsection. 	Points: _____ (25 pts. max.)
P2	<p>Distance from a Priority Funding Area (PFA) <i>Is the property near a PFA such that it serves as a buffer between a PFA and a conservation zone; or is it sufficiently distant from a PFA or designated growth area to form part of a larger contiguous block of farmland?</i></p> <p>Identify the correct distance and assign the indicated points. The application can receive points for only one distance range.</p> <ul style="list-style-type: none"> The applicant property is adjacent to a community with sewer and/or water. 5 points The applicant property is less than ½ mile, but is not adjacent to a community with sewer and/or water 10 points The applicant property is more than ½ mile, but less than 1 mile from a community with sewer and/or water 15 points The applicant property is more than 1 mile, but less than 2 miles from a community with sewer and/or water 20 points The applicant property is more than 2 miles from a community with sewer and/or water 25 points 	Points: _____ (25 pts. max.)
P3	<p>Starting New Block of Protected Lands <i>In order to encourage landowners in areas of the County that are less protected, points will be given for smaller/newer blocks of protected lands. Farms can only qualify for these points if they received 10 or fewer points in P1 above.</i> No points will be awarded if the applicant property is not within the County's PPA.</p> <ul style="list-style-type: none"> Easements - The combined total acreage of the applicant property and all properties subject to an easement to the Maryland Agricultural Land Preservation Foundation, the Maryland Environmental Trust, or other easement(s) with similar restrictions, which are located within an adjacent block will be calculated. State or Federal resources lands will be considered as equivalent to easements. The applicant will receive one (1) point for each 50 acres, or portion thereof, of the total acres calculated in this subsection. Districts - The total acreage of all non-easement properties subject to a District Agreement with the County which are located within an adjacent block of the applicant's property will be calculated. The applicant will receive one (1) point for each 100 acres, or portion thereof, of the total acres calculated in this subsection. 	Points: _____ (20 pts. max.)
P4	<p>Re-application Has an application for this specific property been submitted to the County previously that has not resulted in an easement offer.</p>	Points: _____ (20 pts. max.)
P5	<p>Historic, Scenic, or Habitat Value of Site Does the subject property have non-agricultural site-specific attributes highly valued by the County? A property shall receive the points indicated for each of the qualifying designations below. If a property contains several of the designations, the points for each shall be added together for a total score which shall not be greater than 19 points. Do not count historic designations more than once. To verify if a site contains these attributes, an evaluator may need to consult with the appropriate State or County representative or agency, such as the designated local Historic Preservation Planner, the Maryland Historical Trust, or the Department of Natural Resources.</p> <ul style="list-style-type: none"> Contains structure/s listed in the National Register of Historic Places, the County Historic Sites Listing, or the Maryland Inventory of Historic Structures 2 points Contains Rare, Threatened or Endangered Species Habitat or is in an Area of Critical State Concern 2 points Is part of a contiguous forested area (25 acres or greater) 5 points Located along a National or State Scenic Byway 5 points Borders tidal waters 5 points 	Points: _____ (10 pts. max.)

Bonus Points based on District Establishment – added to EPF score

Year	¼ point per year	1 point per year
2009	2.75	11
2010	2.50	10
2011	2.25	9
2012	2.00	8
2013	1.75	7
2014	1.50	6
2015	1.25	5
2016	1.00	4
2017	0.75	3
2018	0.50	2
2019	0.25	1

Comparisons of Options for altering percentage values of sections as well as effect of a ¼ point per year bonus or 1 point per year bonus added to EPF score.

Applicant	Option 1 Rank no bonus	Rank with .25 pt bonus	Rank with 1 pt bonus	Option 2 Rank no bonus	Rank with .25 pt bonus	Rank with 1 pt bonus	Option 3 Rank no bonus	Rank with .25 pt bonus	Rank with 1 pt bonus	Option 1 Rank no bonus	Rank with .25 pt bonus	Rank with 1 pt bonus	Original FY2020 Rank
A	18	18	22	18	19	20	17	17	21	16	18	20	13
B	11	11	12	11	11	12	10	10	12	14	14	17	19
C	19	20	20	22	23	23	20	20	22	22	22	22	16
D	27	27	23	27	27	25	27	27	24	28	27	26	30
E	21	19	17	23	20	19	22	22	18	20	19	18	14
F	16	16	18	13	13	15	16	16	16	10	10	14	20
G	24	24	25	24	24	24	23	23	25	25	25	25	29
H	20	21	21	21	22	22	18	18	19	23	23	23	25
I	12	13	13	12	12	13	12	13	13	12	12	15	21
J	10	9	9	10	10	9	8	8	8	17	16	12	6
K	22	23	24	20	21	21	19	19	20	21	21	21	22
L	2	4	5	2	2	5	5	4	6	2	2	3	2
M	23	22	19	19	18	17	24	24	23	11	11	10	17
N	3	3	3	4	5	4	7	7	5	4	4	4	3
O	1	1	1	1	1	1	1	1	2	1	1	1	1
P	7	7	7	5	7	8	6	6	7	5	6	7	4
Q	13	14	14	16	17	18	14	14	14	18	20	19	8
R	15	15	15	14	15	14	15	15	15	15	15	16	7
S	17	17	16	17	16	16	21	21	17	13	13	13	26
T	8	10	11	8	9	10	11	11	11	8	9	9	18
U	9	8	4	9	8	3	9	9	3	9	8	5	15
V	6	6	6	6	6	6	2	3	4	7	7	8	11
W	14	12	10	15	14	11	13	12	10	19	17	11	27
X	25	25	26	25	25	26	25	25	26	24	24	24	31
Y	28	28	28	28	28	28	28	28	28	27	28	28	33
Z	26	26	27	26	26	27	26	26	27	26	26	27	32
AA	5	2	2	7	4	2	4	2	1	6	5	2	10
BB	4	5	8	3	3	7	3	5	9	3	3	6	23

Side by Side Comparison of how factoring in District age effects rankings

Applicant	Option 1 Rank	Option 1 with DA Final Rank	Option 2 Rank	Option 2 with DA Final Rank	Option 3 Rank	Option 3 with DA Final Rank	Option 4 Rank	Option 4 with DA Final Rank	Total District Acreage	Original FY2020 Rank
A	18	24	18	24	18	24	16	22	330.93	13
B	11	18	11	19	11	18	14	20	203.78	19
C	19	21	22	21	19	21	22	21	219.86	16
D	27	17	27	18	27	17	28	18	110.47	30
E	21	14	23	17	21	14	20	14	155.17	14
F	16	20	13	20	16	20	10	16	84.008	20
G	24	26	24	26	24	26	25	26	50.82	29
H	20	22	21	23	20	22	23	24	89.45	25
I	12	11	12	11	12	11	12	13	107.412	21
J	10	5	10	5	10	5	17	10	247.52	6
K	22	23	20	22	22	23	21	23	293.96	22
L	2	4	2	4	2	4	2	4	204.500	2
M	23	19	19	13	23	19	11	8	144.000	17
N	3	2	4	2	3	2	4	2	309.640	3
O	1	6	1	6	1	6	1	5	100.426	1
P	7	10	5	10	7	10	5	9	253.582	4
Q	13	12	16	16	13	12	18	19	56.02	8
R	15	16	14	15	15	16	15	17	91.77	7
S	17	13	17	12	17	13	13	11	121.120	26
T	8	8	8	8	8	8	8	6	132.640	18
U	9	3	9	3	9	3	9	3	270.22	15
V	6	7	6	7	6	7	7	7	224.667	11
W	14	9	15	9	14	9	19	12	322.180	27
X	25	25	25	25	25	25	24	25	93.77	31
Y	28	28	28	28	28	28	27	28	20.04	33
Z	26	27	26	27	26	27	26	27	6.64	32
AA	5	1	7	1	5	1	6	1	242.940	10
BB	4	15	3	14	4	15	3	15	294.780	23

Option 1: Soil Capability is 30%, Farm Quality and Potential is 35%, and Priority Preservation Area is 35%.

Applicant	Option 1 Rank	EPF Points	DA signed by owner	DA Rank	DA Points	Total Points	Final Rank	Total District Acreage	Original FY2020 Rank
AA	5	24	4/6/2009	2	27	51	1	242.940	10
N	3	26	4/2/2014	6	23	49	2	309.640	3
U	9	20	4/1/2009	1	28	48	3	270.22	15
L	2	27	3/16/2017	13	16	43	4	204.500	2
J	10	19	8/15/2013	5	24	43	5	247.52	6
O	1	28	3/23/2017	16	13	41	6	100.426	1
V	6	23	5/25/2016	11	18	41	7	224.667	11
T	8	21	2/9/2016	9	20	41	8	132.640	18
W	14	15	4/11/2012	4	25	40	9	322.180	27
P	7	22	3/23/2017	17	12	34	10	253.582	4
I	12	17	1/26/2017	12	17	34	11	107.412	21
Q	13	16	3/16/2017	14	15	31	12	56.02	8
S	17	12	2/9/2016	10	19	31	13	121.120	26
E	21	8	7/13/2015	7	22	30	14	155.17	14
BB	4	25	1/28/2019	25	4	29	15	294.780	23
R	15	14	3/16/2017	15	14	28	16	91.77	7
D	27	2	6/3/2011	3	26	28	17	110.47	30
B	11	18	12/14/2018	20	9	27	18	203.78	19
M	23	6	1/30/2016	8	21	27	19	144.000	17
F	16	13	2/2/2018	18	11	24	20	84.008	20
C	19	10	7/11/2018	19	10	20	21	219.86	16
H	20	9	1/24/2019	22	7	16	22	89.45	25
K	22	7	1/24/2019	23	6	13	23	293.96	22
A	18	11	5/7/2019	28	1	12	24	330.93	13
X	25	4	12/30/2018	21	8	12	25	93.77	31
G	24	5	1/24/2019	24	5	10	26	50.82	29
Z	26	3	2/19/2019	26	3	6	27	6.64	32
Y	28	1	2/19/2019	27	2	3	28	20.04	33

Option 2: Soil Capability is 20%, Farm Quality and Potential is 40%, and Priority Preservation Area is 40%.

Applicant	Option 2 Rank	EPF Points	DA signed by owner	DA Rank	DA Points	Total Points	Final Rank	Total District Acreage	Original FY2020 Rank
AA	7	22	4/6/2009	2	27	49	1	242.940	10
N	4	25	4/2/2014	6	23	48	2	309.640	3
U	9	20	4/1/2009	1	28	48	3	270.22	15
L	2	27	3/16/2017	13	16	43	4	204.500	2
J	10	19	8/15/2013	5	24	43	5	247.52	6
O	1	28	3/23/2017	16	13	41	6	100.426	1
V	6	23	5/25/2016	11	18	41	7	224.667	11
T	8	21	2/9/2016	9	20	41	8	132.640	18
W	15	14	4/11/2012	4	25	39	9	322.180	27
P	5	24	3/23/2017	17	12	36	10	253.582	4
I	12	17	1/26/2017	12	17	34	11	107.412	21
S	17	12	2/9/2016	10	19	31	12	121.120	26
M	19	10	1/30/2016	8	21	31	13	144.000	17
BB	3	26	1/28/2019	25	4	30	14	294.780	23
R	14	15	3/16/2017	15	14	29	15	91.77	7
Q	16	13	3/16/2017	14	15	28	16	56.02	8
E	23	6	7/13/2015	7	22	28	17	155.17	14
D	27	2	6/3/2011	3	26	28	18	110.47	30
B	11	18	12/14/2018	20	9	27	19	203.78	19
F	13	16	2/2/2018	18	11	27	20	84.008	20
C	22	7	7/11/2018	19	10	17	21	219.86	16
K	20	9	1/24/2019	23	6	15	22	293.96	22
H	21	8	1/24/2019	22	7	15	23	89.45	25
A	18	11	5/7/2019	28	1	12	24	330.93	13
X	25	4	12/30/2018	21	8	12	25	93.77	31
G	24	5	1/24/2019	24	5	10	26	50.82	29
Z	26	3	2/19/2019	26	3	6	27	6.64	32
Y	28	1	2/19/2019	27	2	3	28	20.04	33

Option 3: Soil Capability is 20%, Farm Quality and Potential is 50%, and Priority Preservation Area is 30%.

Applicant	Option 3 Rank	EPF Points	DA signed by owner	DA Rank	DA Points	Total Points	Final Rank	Total District Acreage	Original FY2020 Rank
AA	5	24	4/6/2009	2	27	51	1	242.940	10
N	3	26	4/2/2014	6	23	49	2	309.640	3
U	9	20	4/1/2009	1	28	48	3	270.22	15
L	2	27	3/16/2017	13	16	43	4	204.500	2
J	10	19	8/15/2013	5	24	43	5	247.52	6
O	1	28	3/23/2017	16	13	41	6	100.426	1
V	6	23	5/25/2016	11	18	41	7	224.667	11
T	8	21	2/9/2016	9	20	41	8	132.640	18
W	14	15	4/11/2012	4	25	40	9	322.180	27
P	7	22	3/23/2017	17	12	34	10	253.582	4
I	12	17	1/26/2017	12	17	34	11	107.412	21
Q	13	16	3/16/2017	14	15	31	12	56.02	8
S	17	12	2/9/2016	10	19	31	13	121.120	26
E	21	8	7/13/2015	7	22	30	14	155.17	14
BB	4	25	1/28/2019	25	4	29	15	294.780	23
R	15	14	3/16/2017	15	14	28	16	91.77	7
D	27	2	6/3/2011	3	26	28	17	110.47	30
B	11	18	12/14/2018	20	9	27	18	203.78	19
M	23	6	1/30/2016	8	21	27	19	144.000	17
F	16	13	2/2/2018	18	11	24	20	84.008	20
C	19	10	7/11/2018	19	10	20	21	219.86	16
H	20	9	1/24/2019	22	7	16	22	89.45	25
K	22	7	1/24/2019	23	6	13	23	293.96	22
A	18	11	5/7/2019	28	1	12	24	330.93	13
X	25	4	12/30/2018	21	8	12	25	93.77	31
G	24	5	1/24/2019	24	5	10	26	50.82	29
Z	26	3	2/19/2019	26	3	6	27	6.64	32
Y	28	1	2/19/2019	27	2	3	28	20.04	33

Option 4: Soil Capability is 30%, Farm Quality and Potential is 35%, and Priority Preservation Area is 35%.

Applicant	Option 4 Rank	EPF Points	DA signed by owner	DA Rank	DA Points	Total Points	Final Rank	Total District Acreage	Original FY2020 Rank
AA	6	23	4/6/2009	2	27	50	1	242.940	10
N	4	25	4/2/2014	6	23	48	2	309.640	3
U	9	20	4/1/2009	1	28	48	3	270.22	15
L	2	27	3/16/2017	13	16	43	4	204.500	2
O	1	28	3/23/2017	16	13	41	5	100.426	1
T	8	21	2/9/2016	9	20	41	6	132.640	18
V	7	22	5/25/2016	11	18	40	7	224.667	11
M	11	18	1/30/2016	8	21	39	8	144.000	17
P	5	24	3/23/2017	17	12	36	9	253.582	4
J	17	12	8/15/2013	5	24	36	10	247.52	6
S	13	16	2/9/2016	10	19	35	11	121.120	26
W	19	10	4/11/2012	4	25	35	12	322.180	27
I	12	17	1/26/2017	12	17	34	13	107.412	21
E	20	9	7/13/2015	7	22	31	14	155.17	14
BB	3	26	1/28/2019	25	4	30	15	294.780	23
F	10	19	2/2/2018	18	11	30	16	84.008	20
R	15	14	3/16/2017	15	14	28	17	91.77	7
D	28	1	6/3/2011	3	26	27	18	110.47	30
Q	18	11	3/16/2017	14	15	26	19	56.02	8
B	14	15	12/14/2018	20	9	24	20	203.78	19
C	22	7	7/11/2018	19	10	17	21	219.86	16
A	16	13	5/7/2019	28	1	14	22	330.93	13
K	21	8	1/24/2019	23	6	14	23	293.96	22
H	23	6	1/24/2019	22	7	13	24	89.45	25
X	24	5	12/30/2018	21	8	13	25	93.77	31
G	25	4	1/24/2019	24	5	9	26	50.82	29
Z	26	3	2/19/2019	26	3	6	27	6.64	32
Y	27	2	2/19/2019	27	2	4	28	20.04	33

Discounting Comparisons						
Name	Acres	EPF Rank	"Charles" Final Rank	"QAC" Final Rank		2 EPF+1 Disc
A	203.5	1	6	5		4
B	246.522	2	4	3		1
C	91.77	3	2	1		2
D	56.023	4	1	2		3
E	224.667	5	7	6		6
F	329.928	6	9	8		7
G	155.172	7	3	4		5
H	266.22	8	8	9		8
I	218.86	9	5	7		9

Discounting Options:

Remember, discounting requires ranking properties twice. The first time determines which farms are submitted to MALPF and are appraised. The second time reorders the appraised farms based on their discount ratio and is used for making Round 1 offers.

Double Value to EPF ranking Points + Discount Ranking Points

As requested, we’ve added a column where the points awarded for the EPF rank were doubled, which give greater weight to the EPF scores but still takes into account a landowner’s willingness to discount their asking price.

Charles County

Ranks the farms based on the EPF, assigns points in reverse order (lowest rank, highest points). Then ranks the appraised farms based on the discount ratio, points are assigned in reverse order with a weighting factor of 2. The combined point total is then ranked to determine the final order. Highest number of points = highest rank. In the case of duplicate final scores, farms with the highest EPF score prevail.

Queen Anne’s County

Basically, the same as Charles County but no weighting factor for the discount.

I like the Charles County approach because it gives extra weight to discounting. If we’ve already determined at district establishment that a farm is “worthy” of an easement, then we should give more attention to getting the most land per dollar spent.

CHAPTER 16 GUIDELINES FOR GRANTING OVERLAY EASEMENTS AND RIGHTS-OF-WAY

15.15.16.01

.01 Purpose.

This chapter establishes the criteria and eligibility standards for the approval of overlay easements and rights-of-way on land subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

15.15.16.02

.02 Eligibility.

After a landowner has sold an agricultural preservation easement to the Foundation, the landowner and subsequent landowners may not grant or permit another to establish an easement, right-of-way, or other servitude in that land without the Foundation's written permission. The Foundation may permit an easement, right-of-way, or other servitude to be granted in land encumbered by an agricultural preservation easement, subject to conditions it deems necessary to protect and maintain the agricultural integrity of the farm, under the following circumstances:

- A. If it is to service a lot released from the preservation easement restrictions under Agriculture Article, §2-513, Annotated Code of Maryland;
- B. If it is to service a lot or land permitted to be withheld from the agricultural preservation easement at the time of sale of the agricultural preservation easement to the Foundation;
- C. If it is to service an adjacent farm, provided, however, that its use is restricted to the movement of farm equipment or other items associated with farming;
- D. If it is a forest overlay easement that meets the criteria described in COMAR 15.15.13.01 et seq.;
- E. If the overlay easement documents a use existing at the time the agricultural preservation easement was sold to the Foundation;
- F. If the overlay easement serves telephone, television, gas, or other similar utility lines (but not access) to service the easement property or lots created under §A or B in this regulation;
- G. If the overlay easement enhances a public road or bridge for the public health, safety, or welfare, where a minimal amount of land is required for such project, and the grantee of the proposed overlay easement has condemning authority;
- H. If the overlay easement is used to install a utility easement for electricity, telephone, cable, oil, gas, or similar utility and the grantee of the proposed overlay easement has condemning authority;
- I. If the overlay easement is used to create a septic area for an adjoining property which has a failed septic system and there is no other reasonable alternative site or method available;

~~J. If failure to grant the overlay easement is for another purpose not named in this regulation, and if failure to grant approval as determined by the Foundation would result in significant detrimental impact to the conservation values on an adjacent property as determined by the Foundation. For purposes of this section, “conservation values” means ~~critical~~ natural habitat for native plant and wildlife species including, but not limited to, forests, riparian forested areas, wetlands, and greenways to buffer the Chesapeake Bay and its tributaries from pollution runoff.~~

~~K. For any other lawful purpose not listed above, subject to itsany such further conditions or requirements deemed appropriate by the Foundation’s Board. ,if it is for another purpose not named above.~~

15.15.16.03

.03 Conditions of Approval.

The following conditions apply to any overlay easement approved by the Foundation:

- A. The proposed overlay easement may not prohibit any agricultural operation within the proposed overlay easement area, unless otherwise approved by the Board;
- B. The proposed overlay easement shall have minimal interference on the overall farm operation;
- C. If the proposed overlay easement is a right-of-way, its width shall be the minimum required by law;
- D. When considering an overlay easement request, the Foundation shall consider the legislative intent as provided in Agriculture Article, §2-501, Annotated Code of Maryland; and
- E. The Foundation may require any other conditions it considers appropriate on a case-by-case basis when approving any particular overlay easement proposal, including other conditions required by law or regulation.

15.15.16.04

.04 Application Requirements.

An application to the Foundation for overlay easement approval shall provide the following information:

- A. A location map outlining the entire property, the overlay easement area, and access to the overlay easement area;
- B. A draft of the proposed overlay deed of easement (not a generic copy) that shall clearly list all activities that may or may not be permitted;

- C. If the Foundation requires, the proposed overlay easement form shall include language that would make the proposed overlay easement subordinate to the agricultural preservation easement;
- D. If the application is for a right-of-way easement, information shall be provided regarding the State's or county's minimum width requirements;
- E. A statement of the purpose of the request, including alternatives available to the proposed overlay easement;
- F. Confirmation from the county planning and zoning office that the proposed overlay easement complies with local zoning requirements;
- G. A recommendation from the local Agricultural Land Preservation Advisory Board; and
- H. Any other information the Foundation considers necessary to consider the application.

15.15.16.05

.05 Survey Requirement.

If the Foundation approves the proposed overlay easement, a survey of the overlay easement area, including access, shall be provided to the Foundation for approval before the overlay easement is signed and recorded.

15.15.16.9999

Administrative History

Effective date: June 4, 2018 (45:11 Md. R. 580)

Drafting note, *bold italics* indicate new language, strike-through and brackets indicate deleted language.

Title 15

DEPARTMENT OF AGRICULTURE

Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

Chapter 11 Corrective Agricultural Land Preservation Easements

Authority: Agriculture Article, §§2-504 and 2-513, Annotated Code of Maryland

.01. Scope.

This chapter establishes the criteria and procedure for entering into a corrective easement on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

.02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Agricultural Subdivision.

(a) “Agricultural subdivision” means a division of land for an agricultural purpose.

(b) “Agricultural subdivision” includes the lease of any part or parts less than 100 percent of the total parts of the land for a term in excess of 20 years.

(2) “Boundary line adjustment” means a change in the legal description contained in the Deed of Easement for the purposes of this chapter.

(3) “Corrective easement” means an amendment to an existing easement, an overlay easement over an existing easement, or, in the case of agricultural subdivision, a modification to an existing easement to create two or more separately enforceable easements.

(4) “Easement violation” means any action prohibited by, or a failure to act as required by, the agricultural land preservation easement, Agriculture Article, §2-501 et seq., Annotated Code of Maryland, or COMAR 15.15.

(5) “Exchange” means that land of equal or greater value in terms of acreage and soil types is brought under easement in consideration of land of equal or lesser value being released.

(6) “Landowner” means the person or entity owning the land subject to the easement.

.03. Criteria.

A. Approval. The approval for a corrective easement by the Foundation is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis. A request shall be reviewed to determine if the proposed corrective easement will either enhance or have no effect upon any agricultural operation being conducted upon the land. A corrective easement may be used to adjust boundary lines, resolve easement violations, or accommodate a plan that the Foundation has determined will benefit the agricultural operations on the land encumbered by an easement, and may include such other additional terms, conditions, waivers, or restrictions that the Foundation deems appropriate to protect the agricultural viability of the farm.

B. Form of Corrective Easement. A corrective easement may be titled “Amendment to Easement”, “Amendment and Grant to Easement”, or “Corrective Easement.” A corrective easement may also take the form of an “Overlay Easement” when, in the opinion of the Foundation, the existing easement may not be amended because all necessary parties cannot be joined.

C. Boundary Line Adjustment.

(1) If the proposed corrective easement involves the adjustment of boundary lines and part of the land encumbered by the easement is to be released, then:

(a) An equal or greater amount of land of equal or better soil types shall be added to the land under easement;

(b) The value of the easement will not be diminished by the proposed exchange;

(c) The proposed exchange shall be approved by the Board of Public Works; and

(d) The landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary on both the land under easement and the land to be added by corrective easement.

(2) If the proposed corrective easement involves the adjustment of boundary lines and no part of the land encumbered by the easement is to be released, then the Foundation may approve the corrective easement if it will either enhance or have no effect upon the agricultural operations being conducted upon the land. The Foundation may not pay

additional consideration for land gained by any corrective easement without Board of Public Works approval.

(3) If the proposed corrective easements involve an adjustment of boundary lines between two or more adjacent parcels of land encumbered by separate easements, and such boundary line adjustments do not reduce the total aggregate acreage encumbered by such easements, then the Foundation may approve the corrective easements if they will either enhance or have no effect upon the agricultural operations conducted upon the land. The Foundation may not pay additional consideration for land gained by any corrective easement without Board of Public Works approval.

~~[(3) If the proposed corrective easement only involves the correction of an error in the legal description contained in the easement, the Executive Director of the Foundation may approve the correction of the error, with the concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture.]~~

D. Resolving Easement Violations. If the Foundation approves a corrective easement in order to resolve a violation of the easement, the landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to cure the violation.

E. Accommodation of a Plan to Benefit the Agricultural Operation.

(1) If the Foundation approves a corrective easement in order to accommodate a plan to benefit the agricultural operation, the landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary to accommodate the plan.

(2) If the Foundation approves an agricultural subdivision under the provisions of COMAR 15.15.12.01 et seq., the approval is considered to be an accommodation of a plan to benefit the agricultural operation and shall constitute an approval for corrective easements.

~~[(3) A landowner's application to waive the right to request termination under Agriculture Article, §2-514, Annotated Code of Maryland, and to amend the easement to so specify, is considered to be an accommodation of a plan to benefit the agricultural operation. The Executive Director of the Foundation shall automatically approve the request, with the concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture.]~~

F. Previously Approved Agricultural Subdivision. If, prior to the enactment of this chapter, the Foundation approved an agricultural subdivision of the land, without requiring all owners of the divided parcels to execute corrective easements to recognize the approved divided parcels, all owners of the divided parcels shall agree to the proposed amendment of an easement. If all owners do not agree, the corrective easement may take the form of an overlay easement from the landowners making the request for a corrective easement.

- G. Single Tax Parcel. If possible, land that has been approved for corrective easement which is comprised of more than one tax parcel shall be consolidated into a single tax parcel with identification number. In the event of approval of an agricultural subdivision, if possible, each resulting subdivided parcel shall be a single tax parcel with identification number.
- H. Existing Easement Violations. The Foundation may refuse to approve a request for a corrective easement if an easement violation exists upon the land.
- I. ***Exceptions to Criteria. The criteria set forth in this regulation shall not apply to those corrective easement applications addressed in regulation .06 of this chapter***

.04. Corrective Easement Application Procedure.

Before the Foundation may consider a request for a corrective easement, a landowner shall submit the following:

- A. An application, completed and signed by each titled landowner to all of the land encumbered by the easement, which addresses the criteria in Regulation .03 of this chapter;
- B. An unmarked copy of the tax map or boundary survey which outlines the entire easement land;
- C. A second copy of the tax map which shall include the following:
 - (1) Boundaries of the easement land;
 - (2) If applicable, the location of the proposed change in boundary lines, and the amount of acreage involved; and
 - (3) Location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;
- D. A written statement from the landowner indicating:
 - (1) The reason for the request and an explanation of how the corrective easement will enhance or have no effect upon the agricultural operations;
 - (2) The name, address, email address, and telephone number of all landowners whose lands are involved in the request; and
 - (3) Who will pay for the costs of the transaction;

- E. A written statement from the county program administrator describing:
 - (1) The current overall farm operation and whether the proposed corrective easement will enhance or will have no effect upon the agricultural operations; and
 - (2) If applicable, whether an exchange of land is permissible under county subdivision regulations; and

F. A letter of recommendation from the local agricultural land preservation advisory board.

G. Exceptions to Corrective Easement Application Procedure. The application procedure of this regulation shall not apply to those corrective easement applications addressed in regulation .06 of this chapter.

.05 Requirements Upon Approvals.

A. A landowner may not proceed with plans pursuant to the approval until the corrective easement has been recorded among the land records in the county in which the land is located, unless the Foundation issues a letter permitting the landowner to proceed.

B. Boundary Line Adjustment.

(1) If the Foundation approves the request for corrective easement for boundary line adjustment, the landowner shall submit to the Foundation ~~[[10 copies of]]~~ a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the land area to be released from the easement, if any, and the land area to be encumbered by the easement, along with separate written metes and bounds descriptions of those areas. ***The Foundation has discretion to alter these survey and land description requirements on a case-by-case basis to suit the purposes of the proposed boundary line adjustment.***

(2) If the Board of Public Works approves the request, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

C. Agricultural Subdivision. In cases of agricultural subdivision, the landowners shall follow the requirements and procedures provided in COMAR 15.15.12.05B.

D. Other Corrective Easements. If the request is approved, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

E. *Except as provided in regulation .05.F of this chapter, ~~[[H]]~~if the funds and documentation required by this regulation are not provided by the landowner to the Foundation within 3 years of Foundation board approval, then, unless an extension request is submitted within 3 years and approved by Foundation staff, the approval is void.*

F. *If a corrective easement is approved pursuant to regulation .03.D of this chapter (“Resolving Easement Violations”), such approval shall expire upon the Foundation board deciding that the applicant has not acted with diligence to complete the corrective easement.*

G. *Exceptions to Requirements Upon Approvals. The requirements of this regulation shall not apply to the types of corrective easement applications addressed in regulation .06 of this chapter.*

.06 Administrative Approvals for Corrective Easements.

A. *The following types of applications for corrective easements may be approved administratively because they are considered an accommodation of a plan to benefit the agricultural operation and they either enhance or have no effect upon agricultural operations. The Executive Director of the Foundation may approve these requests, with the concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture:*

(1) Correction of Error. The proposed corrective easement involves the correction of an error in the legal description or some other clerical error contained in the easement;

(2) Waiver of right to request termination. A landowner's application to waive the right to request termination under Agriculture Article, §2-514, Annotated Code of Maryland, and to amend the easement to so specify; or

(3) Adoption of Current Easement Terms. A landowner's application to amend an existing easement to conform to the terms of the Foundation's current easement template.

B. *Before the Foundation may consider a request for a corrective easement under this regulation, a landowner shall submit the following:*

(1) An application, completed and signed by each titled landowner to all of the land encumbered by the easement, explaining the purpose of the requested corrective easement; and

(2) Any other documents or materials the Foundation determines necessary to approve the requested corrective easement.