

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2013 Legislative Session

Legislative Day No. 2

Bill No. 9 -2013

Introduced by: The Chairperson at the request of the County Executive

AN ACT revising the criteria used to determine whether property is eligible for the County Agricultural Land Preservation Program; revising the process by which development rights are purchased under the Program; authorizing the County, under certain conditions, to transfer purchased development rights for a certain purpose; requiring the Department of Planning and Zoning to establish a process for such transfers; and generally relating to the County Agricultural Land Preservation Program.

Introduced and read first time _____, 2013. Ordered posted and hearing scheduled.

By order _____
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2013.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2013 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2013 at ___ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2013

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is amended as follows:

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By amending:

1. *Title 15 – Natural Resources*
Section 15.505 “Administration”

2. *Title 15 – Natural Resources*
Section 15.506 “Eligibility criteria”

3. *Title 15 – Natural Resources*
Section 15.507 “Process for buying easements”

4. *Title 15 – Natural Resources*
Section 15.507A(c) “Alternative process for the purchase of easements”

5. *Title 15 – Natural Resources*
Section 15.514(a) “Rights”

Title 15. Natural Resources.
Subtitle 5. Agricultural Land Preservation.

Section 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.

1 (c) *Maps and Records.* The official maps of parcels subject to an agricultural land preservation
2 easement are the 1 inch = 600 feet zoning maps. The Administrator is responsible for seeing that
3 these maps are updated on a regular basis to reflect the addition of new parcels and the
4 amendment of existing parcels.

5 (D) *RESERVATION OF DEVELOPMENT RIGHTS.* NOTWITHSTANDING ANY PROVISION TO THE
6 CONTRARY IN THE ACT, THE DEVELOPMENT RIGHTS ON ELIGIBLE LAND PURCHASED BY THE
7 COUNTY PURSUANT TO SUBSECTION 15.503(A) OF THIS SUBTITLE AFTER MARCH 5, 2013 MAY BE
8 RETAINED BY THE COUNTY AND THE COUNTY MAY TRANSFER THE DEVELOPMENT RIGHTS AS
9 FOLLOWS:

- 10 (1) THE AGRICULTURAL LAND PRESERVATION EASEMENT ON THE PROPERTY SHALL
11 SPECIFY THE NUMBER OF DEVELOPMENT RIGHTS PURCHASED BY THE COUNTY
12 COMPUTED AT THE RATE OF ONE DEVELOPMENT RIGHT PER THREE GROSS ACRES.
- 13 (2) DIRECTOR OF THE DEPARTMENT OF PLANNING AND ZONING SHALL KEEP A
14 CURRENT INVENTORY OF THE DEVELOPMENT RIGHTS ACQUIRED BY THE COUNTY.
- 15 (3) THE COUNTY MAY ONLY SELL AND TRANSFER DEVELOPMENT RIGHTS TO A
16 PURCHASER WHO SHALL USE THE DEVELOPMENT RIGHTS TO DEVELOP PROPERTY IN
17 THE RR ZONING DISTRICT PURSUANT TO SECTION 106 OF THE HOWARD COUNTY
18 ZONING REGULATIONS.
- 19 (4) THE DEPARTMENT OF PLANNING AND ZONING SHALL ESTABLISH A PROCESS TO
20 TRANSFER DEVELOPMENT RIGHTS WHICH SHALL:
 - 21 (I) PROVIDE AT LEAST 30 DAYS' NOTICE OF THE SALE OF THE DEVELOPMENT
22 RIGHTS; AND
 - 23 (II) TRANSFER THE DEVELOPMENT RIGHTS BY FORMAL, WRITTEN CONTRACT TO
24 THE HIGHEST RESPONSIBLE BIDDER; AND
 - 25 (III) RECORD THE TRANSFER IN THE LAND RECORDS FOR HOWARD COUNTY.
- 26 (5) THE TRANSFER OF DEVELOPMENT RIGHTS UNDER THIS SUBSECTION SHALL NOT BE
27 CONSIDERED A DISPOSAL OF REAL PROPERTY PURSUANT TO SECTION 4.201 OF THIS
28 CODE.
- 29 (6) IN THE EVENT THE COUNTY ELECTS TO EXTINGUISH THE DEVELOPMENT RIGHTS,
30 THEN THE AGRICULTURAL LAND PRESERVATION EASEMENT ON THE PROPERTY
31 SHALL STATE THE DEVELOPMENT RIGHTS ARE EXTINGUISHED BY THE COUNTY.

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Section 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:]] CONTAINS AT LEAST 20 CONTIGUOUS ACRES.

- [[i) It is a parcel of at least 50 contiguous acres;
- ii) It is a parcel of at least 20 acres and is contiguous to real property that is:
 - a. Subject to an agricultural land preservation easement owned by Howard County or the Maryland Agricultural Land Preservation Foundation;
 - b. Subject to a preservation or conservation easement owned by the Maryland Environmental trust or a local land trust;
 - c. Owned by the Howard County Board of Education or the Washington Suburban Sanitary Commission;
 - d. Owned by the State of Maryland or Howard County and used as a public park; or
 - e. Subject to a preservation parcel easement, as defined in title 16 of the Howard County Code; or
- iii) It is one of several contiguous parcels (at least 20 acres each) with a total acreage of at least 50 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

1 contingent upon the acquisition of easements on all of the other
2 contiguous parcels.]]

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

4 (i) More than 50 percent of the parcel shall be U.S. Department of
5 Agriculture capability Class I, II and III soils, and more than 66 percent of
6 the parcel shall be Class I through IV soils; and

7 (ii) The parcel shall have:

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

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

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

16 (c) *Donated Acquisitions:*

17 (1) The criteria for the acceptance of donated development rights on any parcel are
18 that the parcel:

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

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

25 a. Be in a zoning district which permits development to a higher
26 residential density than presently exists; and

27 b. Be capable of being subdivided or developed for nonagricultural
28 uses by right.

29 (2) Notwithstanding paragraph (1) of this subsection, an easement on real property
30 may be donated to the County if the real property was released from an
31 agricultural land preservation easement:

- (i) To create a lot under section 15.514 of this subtitle; or
- (ii) For a public interest use under section 15.516 of this subtitle.

Section 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]]A) *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]]B) *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]]C) *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 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]]DECISION to reject the application.

3 (([e])D) *Review by Board:*

- 4 (1) The Board [[shall]]MAY review the application, the Administrator's report and
5 recommendation and [[shall]]MAY make an on-site inspection of the parcel.
- 6 (2) The Board shall hold a public [[hearing]]MEETING to receive comments from the
7 public as to whether the parcel offered is acceptable and desirable.
- 8 (3) [[After the public hearing, the Board shall vote whether or not to continue
9 considering acquisition of the easement. An affirmative vote of at least five
10 members is required before continuing to consider acquisition of the development
11 rights.
- 12 (4)]] After THE PUBLIC MEETING, [[voting to continue considering acquisition of the
13 development rights on a parcel]] the Board shall determine the price to be offered
14 according to the pricing formula AND MAY PROVIDE ANY RECOMMENDATIONS TO
15 THE COUNTY EXECUTIVE CONCERNING THE ACQUISITION [[and shall add optional
16 points, if any, according to the pricing formula]].

17 [[(f) Prioritization. After completing all the steps listed in subsection (e) above for all parcels in
18 the batch, the Board shall rank the applications under consideration in order of their total point
19 scores, from highest to lowest.]]

20 (([g])E) *Purchase:*

- 21 (1) *Offers to landowners.* After determining the price to be paid per acre, based on the
22 pricing formula, the Board shall make an offering proposal to the landowner to
23 purchase the development rights[[, beginning with the property with the highest
24 point score and proceeding in order of rank to the property with the lowest point
25 score, until the funds available for the batch have been committed]]. AN OFFER
26 MADE UNDER THIS SECTION IS SUBJECT TO THE AVAILABILITY OF ADEQUATE
27 BORROWING AUTHORITY.
- 28 (2) *Recommendation to County Executive.* If the landowner agrees to the price, terms
29 and conditions of the offering proposal, the Board shall advise the County
30 Executive of the agreement in a written notification briefly describing the
31 property and the price, terms and conditions agreed upon.

1 (3) *Action by County Executive.* The County Executive may not modify the agreed
2 upon price, terms and conditions, and may only approve or disapprove the
3 purchase as proposed.

4 (4) *Installment purchase; multiyear agreement.* If the County is to pay the price in
5 installments, County Council approval of a multiyear agreement is required,
6 pursuant to section 612 of the Howard County Charter.

7 [[(5) *Deferment to next batch.* If the total amount of money available for the batch has
8 been committed for the purchase of development rights and offers have not been
9 made on all properties in the batch, the Board may recommend that some or all of
10 the remaining applications in the batch be considered with the next batch.]]

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12 **Section 15.507A. Alternate process for the purchase of easements.**

13 (c) *Notification to Potential Participants; [[Processing:]]*

14 [[(1)]] The Administrator may advertise the requirements for participation in the
15 program or may notify potential Applicants through any means authorized under
16 the program from which the funds originate.

17 [[(2) The purchase of an agricultural land preservation easement may be processed
18 individually, and need not be considered in a batch, as provided in subsection
19 15.507(a) of this subtitle.]]

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21 **Section 15.514. Rights.**

22 (a) *General.* The landowner retains all rights of a fee simple owner, except for the development
23 rights which are EITHER extinguished [[by]] OR ACQUIRED BY THE COUNTY THROUGH the
24 easement and the restrictions and conditions imposed in the deed of easement pursuant to this
25 subtitle. The agricultural land preservation easement IS PERPETUAL AND does not grant the public
26 any rights of access or rights to the use of the land.

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28 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland,
29 *that provisions of this Act shall apply to any application for development rights filed on or after*
30 *March 5, 2013.*

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1 **Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland,
2 *that this Act shall become effective 61 days after its enactment.*