

Department of Legislative Services

Maryland General Assembly

2008 Session

FISCAL AND POLICY NOTE

Revised

House Bill 976

(Chair, Environmental Matters Committee) (By Request –
Departmental – Agriculture)

Environmental Matters

Education, Health, and Environmental Affairs

Maryland Agricultural Land Preservation Program - Lot Releases

This departmental bill modifies provisions relating to the release of lots from easement restrictions by the Maryland Agricultural Land Preservation Foundation. Specifically, the bill authorizes MALPF to release a lot larger than two acres under specified conditions when the septic requirements of the Maryland Department of the Environment require more than two acres for a landowner to exercise a retained residential right on a MALPF-preserved farm. The bill also requires that a release or preliminary release include a specified statement by the landowner or child that generally relates to the right to farm MALPF-preserved properties.

The bill applies to lots released on or after October 1, 2008 even if the easement was granted to MALPF prior to that date.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues from reimbursements by landowners due to any increase in acreage released from easement restrictions. Expenditures would not be directly affected.

Local Effect: The bill would not materially affect local operations or finances.

Small Business Effect: The Maryland Department of Agriculture has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Except under specified conditions, upon written application, MALPF is required to release, free of easement restrictions only for the landowner who originally sold the easement, one acre or less for the purpose of constructing a dwelling house for the use of that landowner or child of the landowner, up to a maximum of three lots. A landowner may reserve the right to exclude one unrestricted lot from an easement in lieu of all owner's and children's lots under specified conditions. Except under specified conditions, upon request, an owner may exclude from the easement restrictions one acre per each single dwelling that existed at the time of the sale of the easement as an owner's, children's, or unrestricted lot; before such an exclusion is granted, an owner must agree not to subdivide further for residential purposes any acreage allowed to be released.

If a landowner's easement option contract was approved by the Board of Public Works before October 1, 2003, the landowner retains the following lot rights: (1) the landowner who sold the easement reserves the right to exclude from the easement one acre or less to construct a dwelling house for the use of the landowner or child of the landowner, up to a maximum of 10 lots at a density of one dwelling per 20 acres; and (2) the landowner who sold the easement or any subsequent landowner may exclude from the easement up to one acre per each single dwelling that existed at the time of the sale of the easement, subject to the condition that the lot cannot be subdivided further for residential purposes. No unrestricted lot right is available to landowners whose easement option contract was approved by BPW before October 1, 2003.

The maximum lot size for all lots released from easement restrictions may be greater than one acre, but no more than two acres, if: (1) regulations adopted by MDE require a minimum lot size for a dwelling house of not less than two acres in specified areas; or (2) regulations adopted by the jurisdiction in which the land is situated require that a lot for a dwelling house be larger than one acre. Pursuant to Chapter 174 of 2006, these restrictions governing maximum lot sizes may be waived by MALPF so that the maximum lot size is two acres under specified conditions.

Any release or preliminary release issued for the construction of a dwelling house must include a statement of the conditions under which it was issued, a certification by MALPF that all necessary conditions for release or preliminary release have been met, and copies of any pertinent documents. In addition, it must include a statement that the owner's or child's lot may not be transferred for five years from the date of the final release, except under specified conditions.

Background:

Maximum Size of Released Lots

According to MALPF, in certain cases, because of the perc limitations on a property, MDE can require more than two acres to meet septic requirements. However, under statute, MALPF cannot release more than two acres. MALPF advises that it has come across several situations in the last few years where MDE's septic requirements and MALPF lot size restrictions run at cross purposes to each other, making it difficult for a MALPF program participant to exercise a retained lot right. In the past, MALPF and MDE have worked together to find ways to work around this problem; however, MALPF believes that eventually there will come a time when it will be impossible to reconcile the contradictory requirements of MDE and MALPF and that, as a result, a program participant will be unable to exercise a retained lot right, resulting in a real financial loss to the participant.

Statements to be Included in Releases or Preliminary Releases

MALPF advises that, as the program matures, houses developed on older preserved farms under the retained residential rights for owners' and children's lots are being purchased by subsequent owners unfamiliar with the program, the farms it preserves, and the objective of preserving the properties for ongoing agricultural production. Also, under the recent change in lot eligibility criteria, landowners can choose one unrestricted lot rather than one or more family lots; unrestricted lots can be developed commercially and can be sold immediately to those unfamiliar with and uncommitted to farming operations. According to MALPF, such owners can be unsympathetic and confrontational with the realities of an active farming operation adjacent to their residences. MALPF is proposing this legislation to bolster the legal position of owners of preserved farms in any litigation that challenges their right to farm on MALPF-preserved properties.

State Revenues: When acreage is released from easement restrictions, MALPF is reimbursed on a per acre basis the amount that was paid for the easement. Accordingly, to the extent the bill results in any additional acres released, special fund revenues will increase. MALPF advises, however, that this bill is likely to involve a very small number of properties and that any increase in special fund revenues from additional reimbursements are anticipated to total less than \$10,000 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture (Maryland Agricultural Land Preservation Foundation), Maryland Department of the Environment, Department of Legislative Services

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