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By: **Chairman, Environmental Matters Committee (By Request -  
Departmental - Agriculture)**

Introduced and read first time: January 21, 2004

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 17, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation**

3 FOR the purpose of requiring a statement on certain agricultural land preservation  
4 easement releases that certain lots on an easement may not be transferred until  
5 a certain date except under certain circumstances.

6 BY repealing and reenacting, with amendments,  
7 Article - Agriculture  
8 Section 2-513  
9 Annotated Code of Maryland  
10 (1999 Replacement Volume and 2003 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Agriculture**

14 2-513.

15 (a) Agricultural land preservation easements may be purchased under this  
16 subtitle for any land in agricultural use which meets the minimum criteria  
17 established under § 2-509 of this subtitle if the easement and county regulations  
18 governing the use of the land include the following provisions:

19 (1) Any farm use of land is permitted.

1                   (2)     Operation at any time of any machinery used in farm production or  
2 the primary processing of agricultural products is permitted.

3                   (3)     All normal agricultural operations performed in accordance with  
4 good husbandry practices which do not cause bodily injury or directly endanger  
5 human health are permitted including, but not limited to, sale of farm products  
6 produced on the farm where such sales are made.

7           (b)     (1)     A landowner whose land is subject to an easement may not use the  
8 land for any commercial, industrial, or residential purpose except:

9                   (i)     As determined by the Foundation, for farm and forest related  
10 uses and home occupations; or

11                   (ii)    As otherwise provided under this section.

12                   (2)     Except as provided in paragraphs (3) and (6) of this subsection, on  
13 written application, the Foundation shall release free of easement restrictions only  
14 for the landowner who originally sold an easement, 1 acre or less for the purpose of  
15 constructing a dwelling house for the use only of that landowner or child of the  
16 landowner, up to a maximum of three lots, subject to the following conditions:

17                   (i)     The number of lots allowed to be released under this section,  
18 except as provided in paragraph (6) of this subsection, may not exceed:

19                                 1.     1 lot if the size of the easement property is 20 acres or  
20 more but fewer than 70 acres;

21                                 2.     2 lots if the size of the easement property is 70 acres or  
22 more but fewer than 120 acres; or

23                                 3.     3 lots if the size of the easement property is 120 acres or  
24 more.

25                   (ii)    The resulting density on the property may not exceed the  
26 density allowed under zoning of the property before the Foundation purchased the  
27 easement.

28                   (iii)   The landowner shall pay the State for any acre or portion  
29 released at the price per acre that the State paid the owner for the easement.

30                   (iv)    Before any conveyance or release, the landowner and the child,  
31 if there is a conveyance to a child, shall agree not to subdivide further for residential  
32 purposes any acreage allowed to be released. The agreement shall be recorded among  
33 the land records where the land is located and shall bind all future owners.

34                   (v)     After certifying that the landowner or child of the landowner  
35 has met the conditions provided in subparagraphs (i) through (iv) of this paragraph,  
36 the Foundation shall issue a preliminary release which shall:

1 1. Become final when the Foundation receives and certifies a  
2 nontransferable building permit in the name of the landowner or child of the  
3 landowner for construction of a dwelling house; or

4 2. Become void upon the death of the person for whose  
5 benefit the release was intended if the Foundation has not yet received a building  
6 permit as provided in this subparagraph.

7 (vi) Any release or preliminary release issued under this paragraph  
8 shall include:

9 1. [a] A statement of the conditions under which it was  
10 issued, a certification by the Foundation that all necessary conditions for release or  
11 preliminary release have been met, and copies of any pertinent documents; AND

12 2. A STATEMENT THAT THE OWNER'S OR CHILD'S LOT MAY  
13 NOT BE TRANSFERRED FOR 5 YEARS FROM THE DATE OF THE FINAL RELEASE,  
14 ~~UNLESS APPROVED~~ EXCEPT ON:

15 A. APPROVAL BY THE FOUNDATION; OR

16 B. NOTWITHSTANDING ANY CONDITIONS ON TRANSFERS  
17 IMPOSED UNDER ITEM 1 OF THIS SUBPARAGRAPH, A LENDER PROVIDING NOTICE TO  
18 THE FOUNDATION OF A TRANSFER PURSUANT TO A BONA FIDE FORECLOSURE OF A  
19 MORTGAGE OR DEED OF TRUST OR TO A DEED IN LIEU OF FORECLOSURE.

20 (vii) Any release, preliminary release, building permit, or other  
21 document issued or submitted in accordance with this paragraph shall be recorded  
22 among the land records where the land is located and shall bind all future owners.

23 (viii) The Foundation may not restrict the ability of a landowner who  
24 originally sold an easement to acquire a release under this paragraph beyond the  
25 requirements provided in this section.

26 (3) A landowner may reserve the right to exclude 1 unrestricted lot from  
27 an easement in lieu of all owner's and children's lots to which the landowner would  
28 otherwise be entitled under paragraph (2) of this subsection, subject to the following  
29 conditions:

30 (i) The resulting density on the property shall be less than the  
31 density allowed under zoning of the property before the Foundation purchased the  
32 easement;

33 (ii) An unrestricted lot may be subdivided by the landowner from  
34 the easement and sold to anyone to construct one residential dwelling;

35 (iii) The size of an unrestricted lot shall be 1 acre or less, except as  
36 provided in paragraph (6) of this subsection;

1 (iv) The landowner shall agree not to subdivide further for  
2 residential purposes any acreage allowed to be released, and the agreement shall be  
3 recorded among the land records where the land is located and shall bind all future  
4 owners;

5 (v) The right to the lot is taken into consideration in the appraisal  
6 of fair market value and determination of easement value;

7 (vi) The lot can be subdivided at any time and the location of the lot  
8 to be subdivided is subject to the approval of the local agricultural advisory board and  
9 the Foundation; and

10 (vii) If the property is transferred before the right to exclude the lot  
11 has been exercised, the right may be transferred with the property.

12 (4) A landowner may construct housing for tenants fully engaged in  
13 operation of the farm, but this construction may not exceed 1 tenant house per 100  
14 acres. The land on which a tenant house is constructed may not be subdivided or  
15 conveyed to any person. In addition, the tenant house may not be conveyed separately  
16 from the original parcel.

17 (5) Except as provided in paragraph (6) of this subsection, on request to  
18 the Foundation, an owner may exclude from the easement restrictions 1 acre per each  
19 single dwelling, which existed at the time of the sale of the easement, as an owner's,  
20 children's, or unrestricted lot to which the owner is entitled under paragraph (2) of  
21 this subsection, by a land survey and recordation provided at the expense of the  
22 owner. However, before any exclusion is granted, an owner shall agree with the  
23 Foundation not to subdivide further for residential purposes any acreage allowed to  
24 be released. This agreement shall be recorded among the land records where the land  
25 is located and shall bind all future owners.

26 (6) (i) The restrictions of paragraphs (2) and (5) of this subsection  
27 concerning maximum lot sizes are altered so that the maximum lot size is 2 acres if:

28 1. Regulations adopted by the Department of the  
29 Environment require a minimum lot size for a dwelling house of not less than 2 acres  
30 in areas where there is less than 4 feet of unsaturated and unconsolidated soil  
31 material below the bottom of an on-site sewage disposal system or in areas located  
32 within 2,500 feet of the normal water level of an existing or proposed water supply  
33 reservoir; or

34 2. Regulations adopted by the jurisdiction in which the land  
35 is situated require that a lot for a dwelling house be larger than 1 acre.

36 (ii) For exclusions provided under paragraph (5) of this subsection,  
37 the landowner shall pay the State for any acre or portion released in excess of the 1  
38 acre per single dwelling that existed at the time of easement.

39 (7) On or before September 30, 2004, a landowner who originally sold an  
40 easement may, upon written application to the Foundation, apply for a release of 1

1 acre free of easement restrictions for the construction of a dwelling for one  
2 subsequent landowner which may not be separately subdivided from the property if:

3 (i) A dwelling house did not exist on the property covered by the  
4 easement at the time of the sale of the easement;

5 (ii) The easement was purchased by the Foundation prior to  
6 January 1, 1990;

7 (iii) The property covered by the easement contains 50 acres or  
8 more;

9 (iv) The property covered by the easement contains all of the land  
10 described in the deed or deeds of record at the time of the sale of the easement;

11 (v) The landowner who originally sold the easement has not  
12 exercised the right to 1 acre for the construction of a dwelling house pursuant to  
13 paragraph (2) of this subsection;

14 (vi) Prior to the release, the landowner shall pay the State for 1 acre  
15 at the price per acre that the State paid for the easement; and

16 (vii) The property is located in Carroll County.

17 (c) Purchase of an easement by the Foundation does not grant the public any  
18 right of access or right of use of the subject property.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
20 effect October 1, 2004.