

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 933 (Delegates Stocksdale and Aumann)
Environmental Matters

**Maryland Agricultural Land Preservation Foundation - Request for Release by
Landowner's Estate**

This bill expands the current lot release provisions to require the Maryland Agricultural Land Preservation Foundation (MALPF), to release lots to heirs. If the estate of a deceased landowner whose land is subject to an agricultural easement makes written application within one year of the death of the landowner, MALPF must release free of easement restrictions one acre or less for the purpose of constructing a dwelling house for the child of the landowner, subject to specified conditions.

Fiscal Summary

State Effect: Potential minimal increase in MALPF special fund revenues due to additional lot releases.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: MALPF is required, upon written application submitted by the landowner whose land is subject to an agricultural easement, to release free of easement restrictions one acre or less for the purpose of constructing a dwelling house for the landowner or child of the landowner, subject to specified conditions.

A child's lot may only be released if the original grantor (the person or persons who sold the agricultural land preservation easement to the State) makes a written application to the State.

MALPF advises that it has always accepted a written statement of intent of the original grantor in a letter to MALPF (that is acknowledged in writing) or a will. If the original grantor dies, the written statement of intent already exists, and the lot can be released while the property is in the estate or, if the child inherits the property, after the estate settles. The intent is clear, in writing, and unambiguous.

The lot right is not a right specific to the child, but a right specific to the grantor to request a lot for the child. If the grantor dies or sells or transfers the property without exercising this right, the right is extinguished. It is based on a personal covenant between the original grantor and MALPF and does not survive death, sale, or transfer. Allowing a child to take a lot out during the time the property is in the estate without any written evidence of the original grantor's intent for the child to have that lot would be contrary to the nature of a personal covenant. It would be a significant expansion of a development right to someone who does not have any rights under the personal covenant.

MALPF advises that there could be situations in which a parent (who is a grantor) does not wish for one or any children to have a lot on the property. It could be due to issues of fairness (the property could only support two lots because of its size, and there are four children). It could be that certain children would inherit the parents' assets in other ways, including inheriting the main house as a residence. The parents might not wish to create more development on the property or create possible conflict among children or other heirs.

State Fiscal Effect: The bill is not expected to significantly increase the number of lot release requests received by MALPF in a year. MALPF estimates that an additional two to three release requests per year may occur as a result of the bill. Under the bill, the landowner or the landowner's estate must pay the State for any acre or portion released at the price per acre that the State paid the owner for the easement. Based on an average per acre cost of \$2,200 per acre, special fund revenues could increase by between \$4,400 and \$6,600 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Caroline County, Maryland Department of Agriculture, Baltimore City, Department of Legislative Services

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ncs/ljm

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