



Bill No. 24-19  
Concerning: Amendments to Local Program for the  
Preservation of Critical Agricultural Land  
Introduced October 15, 2024  
Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Expires: January 13, 2024  
Frederick County Code, Chapter 1-13  
Section(s) 34

## COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Brad W. Young on behalf of County Executive Jessica Fitzwater

**AN ACT** to: Amend Section 1-13-24 of the County Code to revise the requirements and processes involved with the Frederick County Critical Farms Local Program.

Date Council Approved: \_\_\_\_\_ Date Transmitted to Executive: \_\_\_\_\_

Executive: \_\_\_\_\_ Date Received: \_\_\_\_\_

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Vetoed: \_\_\_\_\_ Date: \_\_\_\_\_

Date returned to Council by County Executive with no action: \_\_\_\_\_

By amending:  
Frederick County Code, 1-13 Section(s) 34

Other: \_\_\_\_\_

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law.</i>
[Single boldface brackets]	<i>Deleted from existing law.</i>
***	<i>Existing law unaffected by bill.</i>

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2 The County Council of Frederick County, Maryland, finds it necessary and appropriate to  
3 amend Section 1-13-34 of the Frederick County Code, to revise the requirements and processes  
4 involved with the County Critical Farms Program.

5  
6 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF  
7 FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby,  
8 amended as shown on the attached Exhibit 1.

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12 \_\_\_\_\_  
13 Brad W. Young, President  
14 County Council of Frederick County,  
15 Maryland

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**§ 1-13-34. LOCAL PROGRAM FOR THE PRESERVATION OF CRITICAL AGRICULTURAL LAND.**

(A) *Purposes.* There is hereby created in Frederick County a Critical Farms Program, to conserve, protect and encourage use and improvement of agricultural lands; to encourage, promote and protect farming as a valued occupation; and to provide a means of facilitating the acquisition and permanent protection of agricultural land . ~~[for the purpose of protecting certain specific agricultural property from subdivision or other development and also for the purpose of protecting and preserving the family farm and full-time farmers. This protection shall occur primarily through the use of options to purchase development rights easements on this property.]~~ This protection shall occur primarily through the use of options to purchase development rights easements on eligible property.

(B) *Eligibility.* To be eligible for this program, ~~[a farm must meet each of the following criteria: ]~~ an application must meet the following criteria:

(1) Property Eligibility-

(a) ~~[The farm must meet the requirements of the Maryland Agricultural Land Preservation Program for district formation and easement sale that are in effect at the time of the application and must receive a favorable recommendation for district formation from the Frederick County Agricultural Preservation Advisory Board; ]~~ The property must meet the minimum requirements of the Maryland Agricultural Land Preservation Foundation (MALPF) for easement sales in effect as of the date of submission of the at the time of application.

(b) The property must:

i. Be located within or adjacent to a Priority Preservation Area; or

ii. Be located within or adjacent to a Rural Legacy Area; or

iii. Have a soil potential rating greater than 60 out of 100, as calculated by County staff based on USDA data.

(c) The property must total at least 50 contiguous acres, except that if the applicant is purchasing property adjacent to property they currently own, then the property being purchased must be at least 20 contiguous acres and the total area of the current holdings plus the property being purchased must be at least 50 contiguous acres.

(d) The property must be designated No Planned Service in the adopted County water and sewerage plan, unless the property is over 100 acres in size and has a soil potential rating of 80 or above out of 100.

~~(e)[3]~~ Seventy-five percent (75%) of the acreage of the property must be located within an area zoned either agricultural or resource conservation.

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1 (f[4]) The property must be eligible[able] to have additional residential lots subdivided [~~within~~  
2 ~~the farm~~] in accordance with[~~under~~] the county zoning and subdivision regulations. [~~;~~ and]

3 ~~{(5) The applicant must be a full time farmer. To be considered a full time farmer, the applicant~~  
4 ~~ordinarily must have derived a majority of the applicant's gross income from farming during each~~  
5 ~~of the past 3 years. The Frederick County Agricultural Preservation Advisory Board shall have the~~  
6 ~~discretion, however, to determine that an applicant qualifies as a full time farmer for purposes of~~  
7 ~~this program even though a majority of the applicant's gross income during each of the past 3 years~~  
8 ~~has not come from farming. In making this determination the Frederick County Agricultural~~  
9 ~~Preservation Advisory Board shall consider the following:~~

10 (a) ~~The percentage of the applicant's gross income which has been derived from farming;~~

11 ~~— (b) The source and type of income the applicant has received;~~

12 ~~— (c) The applicant's history, involvement and experience in farming;~~

13 ~~— (d) The purposes of this local program for the preservation of critical agricultural land; and~~

14 ~~— (e) If the applicant includes more than 1 individual, the source and type of income each has~~  
15 ~~received individually.]~~

16 (2) Applicant Eligibility:

17 ~~[(a) The applicant is the contract purchaser of the farm; or~~

18 ~~— (b) The farm has been purchased by the applicant within the previous 6 months;]~~

19 (a) An applicant must be a contract purchaser of the property, or has purchased the property  
20 within the 6 months prior to application.

21 (b) An applicant must not have had an ownership interest in the property as an individual or as  
22 an owner of a controlling interest in an entity, within the 5 years prior to application.

23 (c) An applicant must be actively engaged in the field of agriculture and must submit  
24 documentation as to their history, involvement, and experience in agriculture. The applicant must  
25 provide supporting documentation as requested by county staff.

26 (C) Scoring. The evaluation of applications shall be governed by [~~then current~~] priority criteria  
27 for the Frederick County Agricultural Land Preservation Program, as approved by the County  
28 Executive, at the time of application. County staff shall apply the priority criteria and determine  
29 the score and ranking of each application.

30 (D) Board Recommendation. [~~All~~] Information regarding the [~~eligibility criteria and~~] scoring  
31 of each application [~~the applicant and farm~~] will be presented to the Frederick County Agricultural  
32 Preservation Advisory Board ("Ag Board"). [~~Based on the eligibility criteria and the scoring, the~~  
33 ~~Frederick County Agricultural Preservation Advisory Board will decide whether to include the~~  
34 ~~farm in the ranking system. The program administrator will compile a list of active applicants~~  
35 ~~ranked from the highest approved score to the lowest approved score. Each active applicant shall~~  
36 ~~be informed of the applicant's position in the ranking. An application approved by the Advisory~~  
37 ~~Board will be considered active until the applicant submits a written request for cancellation or~~  
38 ~~until the status of the farm changes so that it no longer meets the criteria of this section.] In~~

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1 accordance with Maryland Agriculture Article, Sec. 2-504.1(d)(1), the Ag Board shall make a  
2 recommendation to the County Executive as to which applications should be granted preliminary  
3 approval.

4 ~~[(E) *Procedures.* During the first 14 days of each month in which funds are available for this~~  
5 ~~program, the program administrator shall accept applications for eligibility for this program. The~~  
6 ~~program administrator shall refer each application to the Agricultural Preservation Board for an~~  
7 ~~evaluation of its eligibility for this program.]~~

8 (E) *Preliminary approval.* ~~[Whenever the uncommitted funds of the Frederick County Program~~  
9 ~~for the Preservation of Critical Agricultural Land may be sufficient to allow the funding of an~~  
10 ~~option to purchase a development rights easement, the program administrator will provide the~~  
11 ~~County Executive with the list of the active applicants with ranking. The County Executive may~~  
12 ~~grant preliminary approval to 1 or more applicants, always giving preference to the highest score.]~~  
13 The County Executive may grant preliminary approval to 1 or more applications, [always giving  
14 preference to the highest ranking applicant]based on availability of funds and the ranking  
15 determined by the County staff and approved by the County Executive. The County Executive  
16 may also determine that none of the applications score high enough to justify an option to purchase  
17 a development rights easement through the program.

18 (F) *Easement evaluation.*

19 (1) After preliminary approval, the county will authorize and pay for 2 appraisals of  
20 development rights easement values for the properties, in accordance with the guidelines of the  
21 MALPF~~[Maryland Agricultural Land Preservation Foundation]~~. The 2 appraisals will be used by  
22 County staff to make a recommendation to the County Executive as to the amount of the offer to  
23 be made to the applicant.

24 (2) The maximum value of any development rights easement shall be 70% of the fair market  
25 value of the land less the value of the improvements. The fair market value of the land is the price  
26 as of the valuation date for the highest and best use of the property which a vendor, willing but not  
27 obligated to sell, would accept for the property and which a purchaser, willing but not obligated  
28 to buy, would pay for the property if the property was not subject to any restriction imposed under  
29 State or county agricultural preservation programs.

30 (3) When an agreement as to the easement value has been reached, the county governing body  
31 may grant the final approval of the option to purchase the development rights easement.  
32 Preliminary approval by the County Executive does not obligate the county governing body in any  
33 way to grant final approval.

34 (H) *Option to purchase easement.*

35 (1) After~~[Upon]~~ final approval of the offer by the county governing body, the county will  
36 [agree in writing to] extend a written option offer to the applicant ~~[an option]~~ to purchase a  
37 development rights easement on the property in an amount equal to a maximum of 75% of the  
38 ~~[agreed upon]~~ value of the easement, which option shall extend for a period of 5 years.

39 (2) The option shall ~~[include a statement that the farm in question shall be created as an~~  
40 ~~agricultural land preservation district]~~provide for restrictions on the use of the [land] property

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1 ~~[which]~~that are substantially the same as ~~[those]~~ the restrictions contained in the easement  
2 agreement used by ~~[of]~~ the ~~[Maryland Agricultural Land Preservation Foundation]~~ MALPF. Once  
3 the documents creating this option are prepared and executed, the appropriate documents shall be  
4 recorded in the Land Records of Frederick County.

5 (I) *Easement sale.*

6 (1) The recorded option to purchase will require that the applicant and its heirs or assigns  
7 actively pursue, for a period of 5 years, the sale of a~~[n]~~ development rights easement to~~[of]~~ the  
8 MALPF ~~[Maryland Agricultural Land Preservation]~~ at an asking price no less~~[ower]~~ than the  
9 amount of the option to purchase the development rights easement extended by the county. The  
10 applicant must accept a~~[A]~~ny offer from MALPF that equals or exceeds the amount of the county  
11 option~~[must be accepted by the applicant]~~. If the MALPF~~[Foundation]~~ purchases a development  
12 rights easement from the applicant during this 5 year period, the full amount paid by ~~[of]~~ the county  
13 for the option will be repaid to the county at the settlement of the easement. ~~[Any offer made by~~  
14 ~~the Foundation which is equal to or greater than the amount of the county option must be accepted~~  
15 ~~and the entire amount owed to the county shall be paid to the county at the time of easement~~  
16 ~~settlement.]~~ Settlement of a MALPF~~[Foundation]~~ easement and payment of the proceeds to the  
17 county will release the applicant from any additional obligations related to ~~[of]~~ the option to  
18 purchase by the county.

19 (2) If a development rights easement on the property has not been purchased by the  
20 ~~[Foundation]~~MALPF within 5 years, the applicant may rescind the option to purchase by repaying  
21 to the county the full amount paid by the county for ~~[selling price of]~~ the option, plus interest for  
22 the entire period of the option, at the legal rate in effect at the time of rescission. If the applicant  
23 does not cancel the option and make full repayment to the county, the county will exercise the  
24 option contained in the agreement and purchase the development rights easement from the  
25 applicant for ~~[such]~~ the consideration ~~[as will have]~~ already paid by the county to the applicant for  
26 the option~~[been provided]~~. Unless otherwise agreed by both the county and the applicant, the  
27 easement agreement will be substantially the same as the standard easement agreement of ~~[the~~  
28 ~~Foundation]~~ MALPF. The easement agreement may be assigned by the county to MALPF ~~[the~~  
29 ~~Foundation]~~.

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