

**ORDINANCE ESTABLISHING A LOCAL PROGRAM FOR THE PRESERVATION OF
AGRICULTURAL LAND AND PURCHASE OF AGRICULTURAL LAND
PRESERVATION EASEMENTS THROUGH AN
INSTALLMENT PURCHASE PROGRAM**

RECITALS

Washington County (“the County”) currently has an active agricultural land preservation program.

The County wishes to supplement its existing local program to encourage the preservation of agricultural land and to protect and preserve farming.

The County is an active participant in the Maryland Agricultural Land Preservation Program with over 9,100 acres under easement or under contract for easement settlement and another 18,150 acres covered by district agreements.

It is important to protect the agricultural viability of areas of the County where many farms are already under easement by assisting owners who wish to preserve the land for permanent agricultural use.

The Maryland Agricultural Land Preservation Program does not provide adequate certainty of easement purchase to prevent farms, whose preservation in agricultural activity is desired, from being subdivided into residential lots or otherwise developed.

The County has utilized a program for the preservation of farmland since 1989 and currently holds agricultural land preservation easements on 3,625 acres.

The County would like to accelerate the acquisition of land preservation easements before development options are considered and purchase these easements at present value.

The County would like to provide unique financial and tax advantages to farmers in order to successfully compete with developers.

The County is authorized to enter into installment purchase agreements to acquire development rights on lands located within its boundaries.

The Board of County Commissioners believes it to be in the best interests of the citizens of the County to adopt the attached ordinance.

A duly advertised public hearing on this ordinance was held on September 27, 2005. The public had an opportunity to comment at this public hearing.

Public comment was received, reviewed, and considered concerning the aforesaid Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the attached ordinance is hereby approved and adopted to read as follows:

Adopted and effective this 1st day of November, 2005.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

By: _____
Gregory I. Snook, President

Approved as to form
and legal sufficiency:

Kirk C. Downey
Assistant County Attorney

Mail to:

County Attorney's Office
100 W. Washington Street, Room 202
Hagerstown, MD 21740-4735

WASHINGTON COUNTY INSTALLMENT PURCHASE PROGRAM

(A) **PURPOSE.** There is hereby created in Washington County (“the County”) an installment purchase program for the purpose of accelerating land preservation easement purchases and providing an additional attractive land preservation program for the agricultural landowners and citizens of the County. This ordinance is created with the further purpose to preserve productive agricultural land and woodland which provides for the continued production of food and fiber for the citizens of the County and protects farmland/open space from the impacts from development.

(B) **QUALIFYING CRITERIA**

- (1) **SOIL CRITERIA.** Properties for which a landowner has made application for approval under the Washington County Agricultural Land Preservation Installment Purchase Program (“the Program”) must meet one of the following criteria:
 - A. Minimum of 50% class I, II and III soils;
 - B. Minimum of 50% woodland groups I and II; or
 - C. A combination of farmland and woodland with a minimum of 60% Class I, II and III soils and woodland groups I and II.
- (2) **SIZE CRITERIA.** The minimum size for farms entering the Program shall be 50 acres except; however, farms with fewer than 50 acres may enroll in the program if contiguous to a property of 50 acres or greater which is already under easement in the Program or in conjunction with other applications for properties which in combination meet or exceed 50 acres.
- (3) **LOCATIONAL CRITERIA.** Farms considered for an easement under the Program shall be located in a No Planned Service designation in the adopted Water and Sewerage Plan. The Board of County Commissioners (“the Commissioners”) may approve a property for easement purchase within a water and sewer service area upon a specific finding that the land has extraordinary agricultural capability, is of significant size, and has the potential to be part of a larger area of contiguous preserved land. Before an application may be forwarded by the Agricultural Land Preservation Advisory Board (“the Ag Board”) to the Commissioners, the Planning Commission shall make a recommendation.
- (4) **OTHER CRITERIA.** Farms applying for sale of a development rights easement under the Program must have further subdivision rights under the provisions of the Zoning Ordinance.

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(C) *APPLICATION FOR SALE OF DEVELOPMENT RIGHTS.*

- (1) **ELIGIBILITY.** An owner of agricultural land which meets the minimum qualifications may make application to sell to the County an agricultural preservation easement on the entire contiguous acreage of the land, less one acre per existing dwelling located on the subject property.
- (2) **APPLICATION.** The application shall be made on a form provided by the County and be accompanied by a plat or map of the property at a scale of no smaller than one inch equals six hundred feet. Each application shall also include a certificate that a soil conservation plan approved by the Soil Conservation District for the property has been made or revised within the last ten years from the date of the application. Applications for easement sale under this Program shall be accepted by the Planning Department annually with a deadline of July 1 of each year. All applications shall be forwarded to the Ag Board for review. The Commissioners, upon a recommendation from the Ag Board, may limit the number of applications to be considered based on available funding and the timing to process the applications and make settlement.
- (3) **APPLICATION REVIEW.** Each application shall be reviewed according to the Program Ranking System and ranked from highest score to lowest. The Ag Board's recommendation and ranking shall be forwarded to the Commissioners for approval. Offers to purchase agricultural preservation easements shall be made to the highest ranked farm first with the following offers made in descending order according to the ranking system. The County may modify this procedure if adequate funding is not available for the next property owner in line who would have received an offer if funds were available.

(D) **RANKING.** The Ag Board shall establish a ranking system for the Program which shall, at a minimum, consider soil productivity, development threats and pressures, contribution to a mass of preserved land and good soil conservation practices and stewardship. The Program Ranking System shall be forwarded to the Commissioners for approval. The Program Ranking System may be amended or revised from time to time.

(E) **VALUATION OF THE EASEMENT.** The County will use the Maryland Agricultural Land Preservation Program's (MALPP) method of establishing easement values. Appraisals will be used for determining fair market values and the MALPP agricultural formula will be used to determine the agricultural values. The easement values will be calculated by subtracting the agricultural values from the fair market values.

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(F) ***METHOD OF PAYMENT.***

(1) **PAYMENT.** Payment shall be made by installment purchase agreements with payments extending over 10 years and interest accruing on the outstanding value of the easement at a rate of 3 percent. Each year, a landowner shall be paid an amount equal to 10 % of the value of the easement as set forth in the IPA (the “easement payment”). With the second and each succeeding easement payment, accrued interest on the amount of the easement then outstanding shall be paid.

(2) **SETTLEMENT.** Settlement shall be made by the County after approval by the Commissioners.

(G) ***RECORDING OF THE EASEMENT.*** Once all necessary documents have been properly signed, a deed of easement, restricting, in perpetuity, future development on the property, shall be recorded in the County land records. The form of the deed of easement shall be approved by the Commissioners upon a recommendation of the Ag Board and the Office of the County Attorney.

(H) ***AGRICULTURAL PRESERVATION EASEMENT.*** Upon establishment of an agricultural preservation easement, a landowner agrees to the following conditions:

- (1) To maintain the land in agricultural use or properly managed so that it is available for continued agricultural use from the date that the easement is recorded in the land records of the County.
- (2) To implement and maintain a Soil and Water Conservation Plan as prepared by the Soil Conservation District. Such plan shall be kept on file in the offices of the Planning Department and the Soil Conservation District.
- (3) The easement agreement creates an encumbrance upon the land, and binds future owners, heirs, successors and assigns and precludes the subdivision and utilization of the land principally for uses such as residential, institutional, commercial or industrial except as contained within this ordinance or the deed of easement approved by the Commissioners. Any agricultural uses currently permitted would be allowed to continue under this agreement. The easement agreement shall not provide for public access to any privately owned land.
- (4) In addition to any other requirements, the construction of new buildings or structures on the land, other than farm buildings, is contingent upon the written application to and approval by the Department of Planning, subject to review by, and recommendation of, the Ag Board.

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(I) *ADDITIONS TO EXISTING EASEMENTS.*

- (1) **PROCESS.** The process for adding land to existing easements shall be the same as for the initial establishment of an easement. The Ag Board shall establish a minimum size criterion for the addition of land contiguous to an existing easement.
- (2) **TENANT HOME.** The landowner of record at the time of easement sale may, at any time after easement sale, request permission to maintain a tenant home in accordance with conditions established within the Zoning Ordinance for tenants actively engaged in the farming operation. This request shall be submitted to the Department of Planning, subject to the review and recommendation of the Ag Board.
- (3) **OWNER'S OR CHILD'S HOME.** A landowner who sells an easement through the Installment Purchase Program may request lots of up to two (2) acres in size for the exclusive residential use of the owner or a child of the owner as long as the original owner continues to own the land. This right shall not convey to subsequent landowners.
- (4) **MAXIMUM EXCLUSIONS.** The total number of lot exclusions for the owner and children may not exceed one dwelling unit per 50 acres with a maximum lot size of two acres. A landowner may elect to relinquish the ability to exclude all children's/owner's lots for the right to exclude one lot which may be conveyed to persons not an owner or child of the owner. The maximum 2-acre lot shall conform to all County right-of-way requirements. In addition, any landowner of an easement requesting a lot exclusion shall be required to repay the County for that lot. This repayment shall be equal to the amount paid per acre by the County to the landowner.

(J) *USES OF LAND UNDER AGRICULTURAL PRESERVATION EASEMENT.*

- (1) **OTHER PERMITTED USES.** Property under agricultural preservation easement shall be maintained in agricultural use. A landowner may request accessory and compatible commercial uses to an agricultural use of the property as permitted under the Zoning Ordinance, provided that such use does not affect the agricultural integrity of the property or minimize the use of productive agricultural land, and that it fulfills the purpose and intent of the agricultural preservation easement.
- (2) **REQUEST FOR OTHER USES.** Such a request shall be submitted to the Planning Department and decided by the Ag Board, which shall make specific findings in each request as to the appropriateness of such use and

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the impact on the agricultural use of the property. Decisions of the Ag Board may be appealed, within 30 days, *de novo* to the Board of Appeals upon payment of any applicable filing or advertisement fees.

- (3) **COMPATIBILITY.** Accessory and compatible commercial uses must conform to existing regulations and ordinances.

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